



W.P.(MD) No.18530 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 26.02.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.18530 of 2020

P.Kalaiarasan

... Petitioner

Vs.

1.The Director of School Education,
Chennai.

2.The Joint Director of School Education
(Higher Secondary)
Chennai.

3.The Chief Educational Officer,
Thanjavur.

4.The District Educational Officer,
Orathanadu,
Thanjavur District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No.



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62909/W2/E1/2019 dated 08.11.2019 and quash the same, and direct the respondents to promote the petitioner as P.G. Assistant Physics by fixing the seniority from the date of initial appointment i.e., 09.07.2004 and promote from the date on which his juniors were promoted and confer all the consequential benefits.

For Petitioner : Mr.V.Panneerselvam
For Respondents : Mr.V.Om Prakash
Government Advocate

ORDER

The petitioner herein was appointed as Junior Grade B.T. Assistant on consolidated pay on 01.07.2004 and thereafter, brought into regular time scale with effect from 01.06.2006. Thereafter, in the year 2007, the school in which the petitioner was working viz., Panchayat Union Middle School, Kavarapattu, Thanjavur District was upgraded as High School and the petitioner was also absorbed into the post of B.T. Assistant in the High School Service as per the proceedings dated 10.08.2007 issued by the 3rd respondent. According to the petitioner, he was fully qualified for promotion to the post of P.G. Assistant (Physics), as he already acquired



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M.Sc., (Physics) and M.Phil. However, when his case was not included in the seniority list of persons eligible for promotion to the post of P.G. Assistant (Physics), he approached the respondents requesting for inclusion of his name in the list for promotion to the said post. But the same was not considered and he was informed that his seniority will be counted in the High School service only from the date of his joining in the School Education Department with effect from 22.08.2007 and an order dated 08.11.2019 rejecting the request of the petitioner was passed to that effect. It is aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.

2. Heard Sri V.Panneerselvam, learned counsel for the petitioner and Sri V.Om Prakash, learned Government Advocate appearing for the respondents and perused the material on record.

3. It is the contention of the learned counsel for the petitioner that the school in which the petitioner was appointed as Junior Grade B.T. Assistant was upgraded by the respondents on administrative grounds and



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he has no role in the process of the said upgradation and he was also absorbed in the post of B.T. Assistant on upgradation of the school. It is his further contention that he was never informed about he losing the service rendered in the Panchayat Union School, nor he has given any option for absorption into the School Education Service at the time of upgradation and absorption of his service as B.T. Assistant in the School Education Service. Therefore, the service rendered by the petitioner as Junior B.T. Assistant, prior to his absorption in School Education Service, cannot be ignored and the same is liable to be counted for the purpose of seniority in the cadre of B.T. Assistant in School Education Service consequent upon upgradation of the school in question.

4. In support of his contention, learned counsel for the petitioner also placed reliance on a decision of this Court in W.P.(MD) No.1777 of 2007, dated 19.07.2012, which is stated to be confirmed by a learned Division Bench of this Court in W.A.(MD) No.656 of 2013, which is further stated to have been confirmed in S.L.P.(Civil) Diary No.30586 of 2018.



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5. On the other hand, the respondents filed a counter affidavit resisting the claim of the petitioner and also contending that in terms of G.O.Ms.No.209, School Education Department, dated 08.05.1997, the Teachers transferred from Elementary Unit to Secondary Unit accorded promotion seniority on the date of absorption into Secondary Unit only and in terms of the said G.O.Ms.No.209, dated 08.05.1997, the date of seniority was fixed on the date of joining in the Secondary Unit, which is valid in law and also further stated that the petitioner was absorbed in the High School as per the option submitted by the petitioner himself with condition that his seniority will be fixed only on 22.08.2007 and accordingly, the petitioner was absorbed in High School. Thus, it is contended that the petitioner having agreed for such conditional absorption, is not entitled to claim the service rendered by him as Junior B.T. Assistant for the purpose of counting seniority in the post of B.T. Assistant in the High School.

6. In support of the his contention, the learned Government Advocate placed reliance on a decision of this Court in W.P.(MD) No.5196 of 2015 and batch, dated 02.06.2022.



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7. This Court having noticed the contention of the respondents that the petitioner has opted for absorption on certain conditions, as contended in Paragraph No.4 of the counter, required the respondents to produce the said option form said to have been submitted by the petitioner. Paragraph No.4 of the counter reads as under:

“4. It is further submitted that the petitioner was appointed in the post of B.T. Assistant in the school functioning under Elementary Education department through TRB Examination on 01.07.2004 and his appointment was regularized from 01.06.2006. The above school was upgraded as High School in 2007 and the petitioner was absorbed in the High School as per the Option submitted by the petitioner himself with condition that the seniority will be fixed only on 22.08.2007 and the petitioner was absorbed in the High School as per the option submitted by the petitioner himself with condition that the seniority will be fixed only on 22.08.2007 in the Secondary Unit. Even though he was selected by TRB his date of seniority was fixed on the date of absorption in to the Secondary Education Department only.”



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8. But, the respondents could not produce any such option form, but by placing reliance on a letter bearing Na.Ka.No.1296/Aa2/2007, dated 28.08.2007, which is an internal communication between the Deputy Elementary Educational Officer, Thanjavur and Chief Education Officer, Thanjavur, the respondents contended that the petitioner has opted to go to High School. But no such option form is produced before this Court. Further, the learned Government Advocate also placed reliance on certain entries made in the service register of the petitioner. This Court has thoroughly perused the said entry made on 15.11.2007. But there is nothing in the said entries to suggest that the petitioner had ever opted for his absorption, nor he was intimated about losing of his service rendered in the post of Junior Grade B.T. Assistant. Thus, it is not a case where the petitioner was informed about losing of the service in the cadre of Junior Grade B.T. Assistant, nor he agreed for the same on his own volition and opted to be absorbed as B.T. Assistant in the High School to commence his service afresh from the date of such absorption.



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9. As rightly relied upon by the learned counsel for the petitioner, a learned Single Judge of this Court in W.P.(MD) No.1777 of 2007, considering similar aspect, by an order dated 19.07.2012, directed the respondents therein to count the services of the petitioner therein rendered in the Panchayat Union Service for the purpose of promotion in the School Education Service, by following another decision of this Court in the case of ***Tamil Nadu Government (Converted) RWO Association Vs. State of Tamil Nadu*** reported in ***CDJ 2005 MHC 879***.

10. Further, the said order of the learned Single Judge in W.P. (MD) No.1777 of 2007 was challenged by the Department by filing W.A. (MD) No.656 of 2013 and the said writ appeal was dismissed by judgment dated 19.04.2017, observing as under:

3. The writ petitioner was working as Tamil Pandit in Moovanur Panchayat Union Middle School. Pursuant to G.O.Ms.No.884, Education Department, dated 24.09.1992, the school was upgraded as High School and the writ petitioner was absorbed as Tamil Pandit in the newly upgraded High School on



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10.11.1992. Thus, from the said date, the writ petitioner came into High School Services from the Panchayat Union services. The appellants sought to deny the benefit of seniority and promotion to the writ petitioner on he being absorbed in the High School Services. This order was put to challenge before the Writ Court.

4. The learned Single Judge, after considering the factual aspects, pointed out that while issuing G.O.Ms.No.864, it has been stated by the Government that the services rendered by the Teachers in the Middle School will not be taken into consideration for the purpose of seniority and promotion on they being absorbed in the High School Services. Further, with regard to the plea raised by the appellants that the cut off date has been fixed, the Court rightly observed that no cat off date could be chosen by the appellants, since the Teachers were not informed that the services rendered by them in the Panchayat Union School would not be taken into consideration for seniority and promotion in the High School Services.



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5. Further, the Court pointed out that the upgradation or Middle School into High School was a policy decision of the Government and in such circumstances, the writ petitioner absorbed in the High School Services and the writ petitioner did not want to come into High School Services and it was purely a decision taken by the Government. Further, the learned Judge took into consideration the order passed by this Court in W.P. (MD) No. 41500 of 2006 etc., batch, wherein, somewhat similar case arose for consideration pertaining to Doctors, who served in Panchayat Unions were later on absorbed in the Government service and the service rendered by them in the Panchayat Union was not counted for the purpose of seniority and other purpose and the Writ Court, after taking into consideration the decisions of the Supreme Court and the Division Bench of this Court, held that the service rendered by those Doctors in the Panchayat Union have to be considered.

6. Furthermore, we may note that no option were called for from the writ petitioner as to Whether he would like to migrate to the High School services from the Middle School services. Thus, based on the



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policy decision, the writ petitioner was compelled to move over to the High School services. In the light of the said factual position, the services rendered by the writ petitioner in the Middle School should be reckoned for all purposes including seniority and promotion. Thus, there is no error in the order passed by the learned Single Judge.”

11. The said decision of the learned Division Bench was also further challenged by filing an SLP in S.L.P.(Civil) Diary No.30586 2018 and the same was also dismissed by the Hon'ble Apex Court, by an order dated 10.05.2019.

12. Then coming to the decision in W.P.No.5196 of 2015 and batch, dated 02.06.2022, relied upon by the learned Government Advocate, the same is a case where options were taken and in view of the said options and willingness expressed by the petitioners therein to forego their seniority, the claim was rejected by this Court. Further, this Court after taken note of the order passed by this Court in W.P.(MD) No.1777 of 2007, dated



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19.07.2012 at Paragraph No.16 held as under:

“16. The petitioners have relied on Mullaivendhan's case rendered in W.P.(MD).No.1777 of 2007, dated 19.07.2012. Against the order, the Government has preferred Writ Appeal in W.A. (MD).No.656 of 2013 and the same was dismissed on 19.04.2017, against which the Government has preferred SLP and the same was also dismissed. In the said Mullaivendhan's case, it has been stated that the teachers were not informed by way of any other communication that on absorption into the High School Service they would lose their earlier service for the purpose of seniority for promotion. Hence, Mullaivendhan's case was ordered and the claim of Mullaivendhan was allowed. However, in the present case, the petitioners have submitted their willingness to forgo their seniority, which they have acquired in the Elementary Education Department, while they were switching over to the School Education Department. Therefore, the said Mullaivendhan's case is not applicable to the present case. The teachers in Elementary Education Department are fully aware that “Union Seniority” is followed in Elementary



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Education and “State Seniority” is followed in School Education and also aware that two Departments are separate Departments and if they are switching over, they should lose their seniority in the Elementary Education Department. In other words, the lien in Elementary Education Department cannot be continued, if they are shifted to School Education Department. Therefore, the said Mullaivendhan's case cannot be followed in the present case. Therefore, the claim of the petitioners is totally against the rules of Elementary Education Department and the Rules of School Education Department.”

Hence, the said decision has no application to the case on hand.

13. Thus, it is a case where the petitioner, who was working as Junior Grade B.T. Assistant in Elementary School Service has been absorbed into School Education Service on upgradation of the Panchayat Union School to that of High School and his service was absorbed as B.T. Assistant in School Education Service. Thus, the service rendered by the petitioner in Panchayat Union Service is in different service altogether and



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the same was governed by a different set of Rules and the post of B.T. Assistant in which the petitioner was absorbed on upgradation of school is governed by different set of Rules and the same is altogether a different service. Once he was absorbed in School Education Service, the Unit of appointment for the purpose of B.T. Assistant is not the School alone, but it is more than that. If that be the case, the persons, who were already working as B.T. Assistant by the date of absorption of the petitioner in the High School as B.T. Assistant but were appointed subsequent to the date of appointment of the petitioner as Junior B.T. Assistant in Panchayat Union School would become juniors for no fault of theirs and without even putting them on notice. Whether the petitioner has given any option to be absorbed in the High School Service or not is not a matter, insofar as B.T. Assistants, who were directly appointed in the High School Service after the date of appointment of the petitioner as Junior B.T. Assistants in Panchayat Union School. On the ground that the petitioner has not opted to be absorbed in High School on upgradation of the school, nor on the ground that he was not informed about losing his service in the Panchayat Union School as Junior B.T. Assistant, etc., are all not the relevant factors, insofar as B.T.



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Assistants, who were directly appointed in High School Service are concerned. Allowing the petitioner herein to march over the B.T. Assistants who were appointed much prior to his absorption into High School Service would definitely cause prejudice to such B.T. Assistants, who were directly appointed in the High School Service, prior to the date of appointment of the petitioner in the post of Junior Grade B.T. Assistant. This is exactly the issue that was considered in W.P.(MD) Nos.5196 to 5198 of 2015

14. However, in the light of the decision rendered by this Court in W.P.(MD) No.1777 of 2007 under similar circumstances, as confirmed by the learned Division Bench of this Court, this Court has no option except to follow the said decision, which is binding on this Court.

15. Accordingly, the impugned order is set aside and the respondents are directed to consider the claim of the petitioner for inclusion of his name in the panel for promotion to the post of P.G. Assistant (Physics) by taking into account the service rendered by him from 01.07.2004 as Junior Grade B.T. Assistant and promote him from the date on which his



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junior was promoted, with all monetary benefits. The respondents are further directed to complete the aforesaid exercise, within a period of three months from the date of receipt of a copy of this order.

16. This Writ Petition is allowed to the extent indicated above.

No costs.

26.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
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