



W.P(MD) No.14507 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.11.2024

Delivered on : 20.12.2024

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) No.14507 of 2016

and

W.M.P(MD)No.10766 of 2016

- 1.R.Saravanan
- 2.P.Kamatchi
- 3.V.R.Ilanchelian
- 4.S.Manickam
- 5.M.Jeyanthi
- 6.N.Muthusamy

... Petitioners

Vs

1. The State of Tamil Nadu
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai – 09.



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2.The Director of School Education,
Chennai – 06.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned communication in Letter No.1687/Nee.Va.1(1)/2016-2, dated 02.06.2016 on the file of the first respondent and quash the same as illegal and consequently to direct the first respondent to fix the seniority of the petitioners in the cadre of B.T. Assistants after the last B.T. Assistant of 2003-2004 batch with the 2nd respondent Department of School Education.

For Petitioners : Mr.G.Karthik
For Respondents : Mr.V.Om Prakash,
Government Advocate

ORDER

This Writ Petition is filed by the petitioner with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication in Letter No.1687/Nee.Va.1(1)/2016-2, dated 02.06.2016 on the file of the first respondent and



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quash the same as illegal and consequently to direct the first respondent to fix the seniority of the petitioners in the cadre of B.T. Assistants after the last B.T. Assistant of 2003-2004 batch with the 2nd respondent Department of School Education.

2. The brief facts of the case are as follows :

(i) The writ petitioners were selected and appointed in Government Middle Schools in accordance with the TRB rank numbers. Since there was no chance of promotional avenues in the Elementary Education Department for B.T Assistants, the first respondent issued G.O(Ms)No.120, School Education, dated 03.06.2009 granting permission for such transfer. The petitioners among others were given transfers to the present schools under the second respondent Directorate of School Education.

(ii) Though the petitioners possess the requisite qualification for appointment to the post of PG assistant, their qualifications were entered into service registers, they have not been included in the panel for

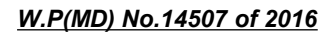


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promotion to the post of PG Assistant, while several other B.T Assistants recruited upto 2005 are included in the panel.

(iii) The petitioners and others gave a common representation dated 20.05.2015 to the first respondent praying for fixing the seniority in cadre of B.T Assistants according to the TRB rank number with year, but the same was not answered. The petitioners constrained to approach this Court by filing a writ petition in W.P. (MD)No.21985 of 2015, the same was disposed of by order dated 09.12.2015. As the same was not complied with, a contempt petition was filed.

(iv) The first respondent passed the impugned communication dated 02.06.2016, rejecting their claim to re-fix the seniority by citing G.O.(Ms).No.209 School Education Department, dated 08.05.1997. The impugned communication is not sustainable, since the G.O.(Ms)No.209, School Education Department, dated 08.05.1997, does not say about placing the transferees from one unit to



a. Those teachers who get transferred lose their seniority when they join a new school;

b. Teachers who get transfer should conduct themselves as per guidelines, rules, and regulations of the Directorate/Office;

c. The moment one gets a transfer to another unit they will lose their rights to claim anything in served from the parent Directorate/Office.

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5. Accordingly, the transfer order dated 25.09.2009 issued to the individual contains 8 conditions, in which it was made it clear that on transfer petitioners would be placed at the bottom of B.T. Assistants teacher post at School Education Department and on transfer from one unit to another unit they would automatically lose parent units seniority. The transfer order never put a challenge by them till date. Without challenging the said conditions, now the petitioners is estopped from maintaining the present petition.

6. As per Rule 35(a) of Tamil Nadu State and Subordinate Service Rules, the seniority of a person in a service, class or category or grade shall end, unless he has been reduced to a lower rank as a punishment be determined by the rank obtained by him in the list of approved candidates drawn up by the Tamil Nadu Public Service Commission or other appointing authority, as the case may be, subject to the rules of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty, irrespective of his seniority.



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7. The seniority of a person in the service is to be as per candidates drawn by the TNPSC or other appointing authority, in the present case, it is not in dispute that in respect of the year 2003 - 2004, when the state wide appointment was made by the Teachers Recruitment Board, it is that rank list which has to be considered and it can never be said that such list could be considered only for the purpose of first transfer and not to the subsequent transfer or promotion. The petitioners were permitted to participate in the unit to unit transfer counselling and after transfer from the Elementary Education Department to School Education Department said seniority is lapsed automatically.

8. As per section 40(6) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 or Rules 35(f) of Tamil Nadu State and Subordinate Services Rules, any service seniority should be claimed within a period of three years from the date of fixing the seniority. For better appreciation, the relevant section is extracted hereunder :

“Section 40 – Fixation of Seniority

(6) Application for the revision of seniority of a person in a service, class, category or grade shall be



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submitted to the appointing authority within a period of three years from the date of appointment to such service, class, category or grade or within a period of three years from the date of order, fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. However, this shall not be applicable to cases of rectifying orders, resulting from mistake of facts.”

9. The Government Advocate further stated that the petitioners were put on notice that they lose their appointment seniority and transfer from Elementary Education Department to School Education Department and they have been placed at the bottom of B.T. Assistants seniority list maintained by the second respondent vide transfer order dated 25.09.2009. The petitioners should claim any seniority right within three years viz., on or before 25.09.2012, but in the present case, admittedly the petitioners had given a representation claiming the appointment of seniority only on 20.05.2015, and therefore, the grievance of the petitioners is liable to be dismissed on the ground of delay and laches.



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10. In a case, ***BS Bajwa and another Vs. State of Punjab and Others reported in 1998(2) SCC 523*** held that seniority dispute shall not be reopened after a lapse of reasonable period because that results in disturbing the settled position. The petitioners request was rejected after elaborate consideration by applying the Rules and therefore, the same does not warrant any interference.

11. Originally the petitioners were selected for appointment in Government Middle Schools under the control of Director of Elementary Education by The Teachers Recruitment Board and posted. The petitioners were transferred from one unit to another only based on the NOC issued by Corporation and they voluntarily joined in the School Education Department during the year 2010. Hence, the seniority can be determined to the petitioners only from the date of joining in the School Education Department in the year 2010, according to G.O(Ms)No.209, Education Department dated 08.05.1997 and G.O.(Ms).No.176 School Education Department dated 17.12.2021. The teachers who were transferred from one unit to another unit on their own consent will be



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treated as junior and placed below the candidates already appointed and working under the particular Department to which a person seeks unit transfer from any other unit.

12. It is stated that in the transfer order itself, it was clearly stated that the petitioners will be placed as Junior most person and on obtaining an undertaking from the concerned teacher and the same was recorded in the service register.

13. It is further stated that in a similar prayer to include the name of the petitioners in the 2019 panel of PG Assistant for promotion to the post of Headmaster in anyone of the Government Higher Secondary Schools in Villupuram District by treating the seniority of the petitioners in the cadre of PG Assistant, as on 2002 (date of joining in Corporation School) The High Court in its judgement dated 20.3.2023, in W.P.No. 27264 of 2019 held as follows.:

“9. That apart, the petitioner having agreed the conditions stated supra had joined the school at Villupuram during August 2009 and now cannot



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seek for a preference in the school, where he has been transferred. The government servant transferred from one unit to another or one way from the corporation or Municipal School to Government School under the School Education or elementary education department or vice versa, will be treated as junior most in their respective category in the transferred unit and the petitioner's seniority has also been fixed appropriately by the said unit at Villupuram and therefore, the petitioner's prayer, viz., to include his name in the 2019 panel of PG Assistant for promotion to the post of Headmaster, cannot be allowed and the same will defeat the very purpose of the government policy and the petitioner's rights are no way affected. The petitioner's turn, if any, will be taken up once he is fit for promotion in the upcoming years. In view of the above the present Writ Petition is dismissed."

14. In a similar prayer for inclusion of the petitioners name in the seniority for Higher Secondary School Headmasters by fixing the seniority based on the date of joining MBC and BC Department, the High



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Court dismissed the writ petition in W.P.No.6087 of 2022 dated 22.06.2023 with the following order :

"7. Thus, when the petitioners have waived their rights by giving their consent for placing them as junior most in the School Education Department at the time of their transfer, there is no justification for claiming entitlement of their seniority from the date of their initial appointment."

15. In similar cases pertaining to seniority for those teachers joint in the School Education Department under unit transfer, the High Court delivered judgements in W.A.No.2723 of 2012 dated 14.12.2012, in W.A.Nos.1211 & 1213 of 2019, 1782, 1825, 2031 of 2018 dated 18.06.2019, in W.A.No.3727 of 2019 dated 19.02.2020.

16. Therefore, the seniority of the petitioners could not be counted from the date of joining B.T Assistants in the Government Middle School for the purpose of including in the panel for promotion in the School Education Department, their seniority for all promotion in



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Directorate of School Education will be counted only from their date of joining in Directorate of School Education Department and not from the date of joining in the Schools under Elementary Education Department.

17. Heard the learned counsel on either side and perused the materials available on record.

18.G.O.(Ms)No.388 dated 19.06.1996 issued after considering the grievance of the Middle School Teachers who have been appointed in various units, made a request to transfer them on their willingness, relaxed the condition stipulated in G.O.No.10, dated 07.01.1974 and as per the above Government Order, the teachers who have been appointed by Government/Municipality/Corporation/Panchayat could be transferred to any unit, but the transferred teachers shall lose their lien in the existing post and will not regain it.

19. G.O.(Ms)No.209 dated 08.05.1997, issued by the Education Department categorically states that teachers of Panchayat



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Union, Corporation School can get transfer from one unit to another unit will be placed as junior most in the transferred unit.

20. All the petitioners were recruited and the transfer orders issued to the 1st petitioner vide proceedings in Na.Ka.No. 24454/C2/E1/2009 dated 25.09.2009, the 2nd petitioner vide proceedings in Na.Ka.No.29918/C3/E1/2009 dated 25.09.2009, the 3rd petitioner vide proceedings in Na.Ka.No.24454/C2/E1/2009 dated 25.09.2009, the 4th petitioner vide proceedings in Na.Ka.No.24454/C2/E1/2009 dated 25.09.2009, the 5th petitioner vide proceedings in Na.Ka.No.24454/C2/E1/2009 dated 25.09.2009, the 6th petitioner vide proceedings in Na.Ka.No.24454/C2/E1/2009 dated 25.09.2009, from the Department of Elementary Education to the Department of School Education, in which it was specifically stipulates that their seniority will be calculated from date in which she/he joins. The teacher who transferred from one unit to another unit will be placed as junior to the graduate teachers who were joined prior to her/his transfer and he/she will be placed as junior most.



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21. The order was issued in the year 2009. After accepting the same the writ petitioners transferred from their parent unit to another unit opted by them after accepting the condition stipulated in G.O. (Ms)No.209 dated 08.05.1997, and as per the respective transfer proceedings issued to them.

22. The learned Government Advocate clearly stated that the petitioners should claim seniority within three years from the date of fixing seniority. But the petitioners failed to claim the same for which they stated that they made common representation only on 20.05.2015 which is beyond the stipulated time and the writ petitions are therefore, liable to be dismissed on the ground of delay and laches as there is no explanation for the delay.

23. Further G.O.(Ms)No.209 School Education Department dated 08.05.1997 and G.O.(Ms) No.176 School Education Department dated 17.12.2021 clearly stipulates that the seniority can be determined



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only from the date of joining in the School Education Department in the year 2010. As per the above Government Order the teachers who were transferred from unit to another unit on their consent will be treated as junior most and placed before the candidates already appointed and they should not claim their original seniority. After accepting the same, the writ petitioners joined in the new unit, now cannot seek preference to the date of appointment.

24. The learned Government Advocate appearing for the respondents relied on the judgments in ***BS Bajwa and another Vs. State of Punjab and Others reported in 1998(2) SCC 523*** and also the orders passed by the Division Bench of this Court in W.A.No.2723 of 2012 dated 14.12.2012, in W.A.Nos.1211 & 1213 of 2019, 1782, 1825, 2031 of 2018 dated 18.06.2019 and in W.A.No.3727 of 2019 dated 19.02.2020. The above cases are squarely applicable to this case. Therefore, the writ petition has no merit and hence, the writ petition is liable to be dismissed.



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25. In view of the above, the Writ Petition stands dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

NCC : Yes / No

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1. The Principal Secretary,
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Department of School Education,
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2. The Director of School Education,
Chennai – 06



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