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W.P.No.28600 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.03.2025
Pronounced On	17.06.2025

Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28600 of 2014
and M.P.No.1 of 2014

A.Manoharan

...Petitioner

Versus

- 1.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 2.The District Elementary Educational Officer,
Tiruppur District, Tiruppur.
- 3.The Assistant Elementary Educational Officer,
Avinasi Panchayat Union,
Avinasi, Tiruppur District.
- 4.Thiru.D.Vadivel

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent in relation to proceedings Na.Ka.No.1186/A5/2014 dated 18.06.2014 and quash the same and issue a consequential direction to the respondents 1 to 3 to include the name of the petitioner at the appropriate place in the seniority list of Secondary Grade Teachers as on 01.01.2013 and consequently in the panel as on 01.01.2013 for promotion to the post of B.T.Assistant for Avinasi Panchayat Union,



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above the 4th respondent and promote the petitioner as B.T.Assistant in English when the 4th respondent is promoted as B.T.Assistant in English or promote the petitioner as B.T.Assistant as per the panel as on 01.01.2014 with service and monetary benefits.

For Petitioner : Mr.R.Saseetharan
For Respondents – 1 to 3 : Mr.S.Prabhakaran,
Government Advocate
For Respondent – 4 : Mr.P.Nagaraju

ORDER

In this Writ Petition, the Petitioner has challenged the Promotion Order dated 18.06.2014 bearing Ref.Na.Ka.No.1186/A5/2014 (hereinafter referred to as “Impugned Order”) passed by the 2nd Respondent.

2. By the Impugned Order, the 2nd Respondent has promoted the 4th Respondent as B.T.Assistant in English ignoring the rank in the Seniority List for the year 2014 prepared as on 01.01.2014. The Petitioner's name has been placed above the name of the 4th Respondent in the Seniority List for the year 2014 prepared as on 01.01.2014.

3. The case of the Petitioner is that the Petitioner is senior to the 4th



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Respondent, despite the same, the promotion has been given to the 4th Respondent. In the Counter Affidavit of the Official Respondents that has been filed in this Writ Petition, the Official Respondents have justified the promotion given to the 4th Respondent on the followings two grounds:-

- (i) that the 4th Respondent is senior by age to the Petitioner;
- (ii) that the 4th Respondent joined the service on **20.10.2004** as a Secondary Grade Teacher, whereas, the Petitioner joined the service as a Secondary Grade Teacher only on **09.12.2005**.

4. The learned counsel for the Petitioner drew the attention of this Court to the provisions of the Special Rules for Tamil Nadu Elementary Educational Subordinate Services in **G.O.(Ms).No.1383 Education (CUS-I) Department dated 23.08.1998**. Specifically, reference was made to **Clause 9** of the aforesaid Government Order, wherein, it has been stated that for the purpose of appointment as full member, reappointment as full member, reappointment or discharge in different categories each panchayat Union shall be a unit.

4.1. It is submitted by the learned counsel for the Petitioner that the



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Petitioner joined the service on 09.12.2005 in Avinasi Panchayat Union. On the same day, the 4th Respondent took a transfer from Tirupur Municipality and therefore, between the Petitioner and 4th Respondent, the Petitioner was to be treated as a senior in accordance with the aforesaid Government Order.

4.2. Further, the learned counsel for the Petitioner referred to the approved Panel for Promotion for the Year 2014 prepared with the crucial as on 01.01.2014, wherein, the Petitioner has been placed at S.No.1, whereas, the 4th Respondent has been placed at S.No.2.

4.3. It is also submitted by the learned counsel for the Petitioner that the promotion given to the 4th Respondent vide Impugned Order dated 18.06.2014 is contrary to the aforesaid Rules in **G.O.(Ms).No.1383 Education (CUS-I) Department dated 23.08.1998.**

4.4. The learned counsel for the Petitioner also referred to the guidelines issued by the Government and communicated by the Director of Elementary Education. Specifically, reference is made to illustration in Paragraph No.2 of the said Guidelines dated 22.02.1995 in R.C.



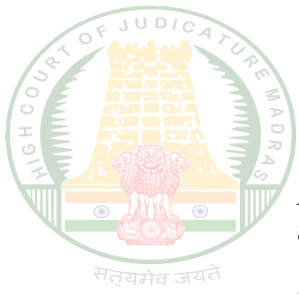
No.36515/EDI/94 issued by the Director of Elementary Education, Chennai.

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4.5. It is therefore submitted by the learned counsel for the Petitioner that in the teeth of **G.O.(Ms).No.1383 Education (CUS-I) Department dated 23.08.1998**, the aforesaid Guidelines dated 22.02.1995 and the approved Panel for Promotion for the year 2014 prepared with the crucial date as on 01.01.2014, the promotion given to the 4th Respondent is liable to be quashed with a consequential direction.

4.6. The learned counsel for the Petitioner submitted that the issue involved herein is no longer *res integra* and is covered by the decision of this Court rendered in **N.Vijayalakshmi Vs. The Director of Elementary Education & Ors.** in W.P.No.28423 of 2011 vide Order dated 04.04.2018, wherein, it has been held as follows:

“14. The arguments put forth by the learned Government Advocate appearing for the official respondents, are per se invalid and unacceptable for the simple reason that by their own admission, the facts were brought out that both the respondents 4 and 5 when they were transferred to Dharmapuri Union, they were unapproved probationers like the petitioner. In which event, Clause (iv) of the seniority Rule as extracted above, will have to be pressed into service for the purpose of fixation of inter se seniority, but instead of that, the administration had invoked Clause (i) and had placed respondents 4 and 5 above the petitioner only for the purpose of promotion to the post of Primary School Headmaster. The said respondents were unapproved probationers on the dates when they were transferred to Dharmapuri Union. As rightly contended by the learned counsel for the petitioner, once the respondents 4 and 5 were also unapproved probationers on the dates when they were transferred to



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Dharmapuri Union, i.e, 19.08.1998 and 25.08.1998 respectively, they were to take the seniority below the petitioner who was already working in Dharmapuri Union and that all three of them were unapproved probationers at that particular point of time. Since the facts regarding to appointment of the petitioner vis-a-vis respondents 4 and 5 and also the declaration of probation have been admitted and not disputed, this Court has to necessarily accept the entire contentions put forth by the learned counsel for the petitioner.

15.

16.

17. *Accordingly, the Writ Petition is allowed and the impugned order, viz., in Na.Ka.No.24310/L1/09 dated 31.07.2009 by the 1st respondent and Na.Ka.No.857/A1/2008 dated 02.03.2011 are hereby set aside. Consequently, the respondents 1 to 3 are directed to grant promotion to the petitioner as Primary School Headmaster on the date when respondents 4 and 5 were promoted, i.e. 23.07.2007 with all attendant benefits including pay fixation, arrears of salary and fixation of seniority, etc. The direction of the Court shall be complied with by the respondents 1 to 3 within a period of eight weeks from the date of receipt of a copy of this order. No costs."*

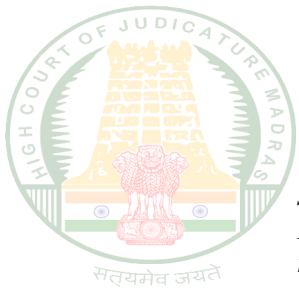
5. On the other hand, learned Government Advocate for the Respondents 1 to 3 submitted that this Writ Petition is devoid of merits. He has also drew the attention of this Court to Clause 35A of the Tamil Nadu Subordinate Service Rules, which has been extracted hereunder:-

"35(a) The seniority of a person in service, Class or category or grade shall 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 candidate drawn up by the Tamil Nadu public service Commission or other Appointing Authority, as the case may be, Subject to the rule 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.

35(aa). The seniority of a person in a service, class, category or grade shall, Where the normal method of recruitment to thar service, class, category or grade, is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to the date of which he is appointed to the services, class, category or grade;

Provided that where the junior appointed by a particular method or recruitment happens to be appointed to a service, class, category or grade, earlier than the senior appointment by the same method of recruitment, the senior shall be deemed to have been appointed to the service, class category or grade on the same day on which the junior was so appointed.

Provided further that the benefit of the above proviso shall be available to the



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*senior only for the purpose of fixing inter-se-seniority;
Provided also that where persons appointed by more than one method of recruitment are appointed or deemed to have been appointed to the service, class, category or grade on the same day, their inter-se-seniority shall be decided with reference to their age.*

Hence the 4th respondent was considered for promotion to the post of B.T.Assistant based on the ground that he is senior on the basis of the date of birth and that the petitioner and the fourth respondent are appointed on the same dated from two sources.

Even though the petitioner was appointed on 30.11.2005 he joined duty only on 09.12.2005 and his date of joining alone is considered for panel and also the panel for the year 2013 was not operated due to the interim direction granted by this Honourable court in cases relating to the one year degree and the fresh panel was prepared for the year 2014 hence there is no connection between the panel for the year 2013 and 2014."

5.1. Defending the Impugned Order, the learned Government Advocate for the Respondents 1 to 3 submitted that the promotion was given to the 4th Respondent over the Petitioner as both, the Petitioner and the 4th Respondent joined in Panchayat Union Middle School, Avinasi, Tiruppur District on the same day i.e., 09.12.2005.

5.2. It is further submitted by the learned Government Advocate for the Respondents 1 to 3 that the 4th Respondent was senior by age to the Petitioner as the 4th Respondent was born on **21.03.1971**, whereas, the Petitioner was born only on **10.04.1984**.

5.3. It is further submitted by the learned Government Advocate for the Respondents 1 to 3 that in the Seniority List and the Panel for Promotion



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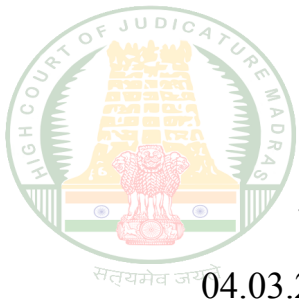
prepared for the Panel Years **2010-2011, 2011-2012 and 2013-2014**, the 4th

Respondent was senior and placed before the Petitioner.

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5.4. It is submitted by the Respondents that the Petitioner had thus accepted the position that the 4th Respondent was senior to the Petitioner and same was not questioned by the Petitioner. Therefore, it is submitted that in terms of **Rule 35F** of the **Tamil Nadu State and Subordinate Service Rules**, the Petitioner was estopped from challenging the Seniority List as the 4th Respondent was senior to the Petitioner in the Seniority List prepared for the Panel Years **2010-2011, 2011-2012 and 2013-2014**.

5.5. The learned Government Advocate for the Respondents 1 to 3 has also produced a copy of the Seniority List prepared as on 01.01.2013, wherein, the 4th Respondent has been placed at S.No.59, whereas, the Petitioner has been placed at S.No.60. Similarly, in the Panel for Promotion for the year 2013 prepared with the crucial date as on 01.01.2013, it is submitted that the 4th Respondent has been placed at S.No.1, whereas, the Petitioner has been placed at S.No.2.



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5.6. Further, it is submitted that the Petitioner's Representation dated 04.03.2013 which has been filed at Page No.64 of the Typed Set of Papers was never sent to the Respondents 1 to 3 and therefore, it is submitted that also on that count this Writ Petition is liable to be dismissed.

5.7. The learned counsel for the 4th Respondent submitted that both the Petitioner and the 4th Respondent joined the Panchayat Union Middle School, Avinasi, Tiruppur District on the same day i.e., on 09.12.2005 and that the Seniority List was prepared at the office of the Assistant Elementary Educational Officer on 1st January of each year and that the Seniority List that was prepared for the earlier Panel Years had never been challenged by the Petitioner and therefore, the seniority of the 4th Respondent cannot be questioned by the Petitioner at this stage.

6. By way of rejoinder, the learned counsel for the Petitioner submitted that in terms of Rule 9 of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service as notified vide G.O.Ms.No.1383 dated 23.08.1988 Education (PUS-1) Department, for the purpose of appointment as full member, reappointment as full member,



reappointment of discharge in different categories each Panchayat Union shall be a Unit.

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6.1. It is further submitted by the learned counsel for the Petitioner that in the proceedings of the Director of Elementary Education dated 22.02.1995 bearing Rc.No.36515/EDI/94, it was clarified that if a person is transferred as a “**probationer**”, the transferee has to be kept in the place below the probationers in the transferred block.

6.2. The learned counsel for the Petitioner also submitted that the 4th Respondent was transferred from Panchayat Union Middle School, Peranayakanputhur, Avinasi on 09.12.2005 i.e., the day on which the Petitioner had joined the Panchayat Union Middle School, Avinasi, Tiruppur District. It is therefore submitted that the date of the Petitioner's appointment and joining the service on 09.12.2005 is the same day, on which, the 4th Respondent had joined in the said Union School and hence, the Petitioner was senior to the 4th Respondent on 09.12.2005.

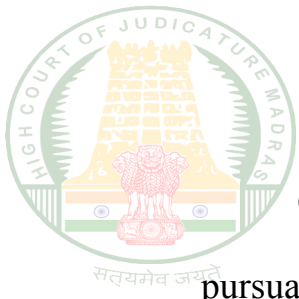
6.3. The learned counsel for the Petitioner further submitted that after



the seniority list was published on **01.01.2013**, in the Panel for Promotion for the year 2014, the 4th Respondent was shown as senior to the Petitioner at S.No.1 while the Petitioner's name was placed at S.No.2. Hence, the aggrieved Petitioner immediately gave a Representation on **04.03.2013**.

6.4. The learned counsel for the Petitioner submitted that the seniority was also revised pursuant to the Petitioner's Representation dated 04.03.2013. It is submitted that in the Panel for Promotion for the Panel Year 2014 prepared with the crucial date as on 01.01.2014, the Petitioner was placed at **S.No.1**, whereas, the 4th Respondent was placed at **S.No.2**. It is submitted that in the over all Seniority List for the year 2014 prepared as on **01.01.2014**, the Petitioner has been placed at S.No.53, whereas, the 4th Respondent has been placed at S.No.98.

6.5. It is also submitted by the learned counsel for the Petitioner that the Petitioner had completed the probation on 31.05.2008, whereas, the 4th Respondent completed the probation only on 17.06.2008.



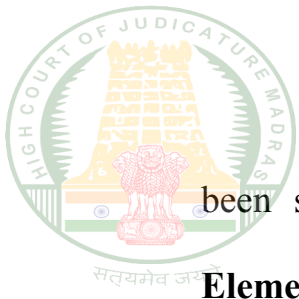
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6.6. It is submitted by the learned counsel for the Petitioner that pursuant to the aforesaid probation Seniority List in the Panel for Promotion also the name of the Petitioner was placed at S.No.1, whereas, the name of the 4th Respondent was placed at S.No.2. It is therefore submitted that the Petitioner is senior, but, he was wrongly placed below the 4th Respondent in the Seniority List for the earlier Panel Years.

7. Heard the learned counsel on either side and perused the materials placed before this Court.

8. The facts narrated above indicates that the date of appointment of Petitioner and 4th Respondent in Panchayat Union Middle School, Avinasi, Tiruppur District are one and the same i.e., 09.12.2005. However, the 4th Respondent was appointed in a different Panchayat Union earlier and was appointed by Transfer in Panchayat Union Middle School, Avinasi, Tiruppur District.

9. *Inter se* seniority between a person coming from a different Panchayat Union and a person appointed in the same Panchayat Union has



been settled under Rule 9 of the Special Rules for the **Tamil Nadu**

Elementary Education Subordinate Service. For the sake of clarity, **Rule**

9 of the Special Rules for the Tamil Nadu Elementary Education

Subordinate Service is extracted hereunder:

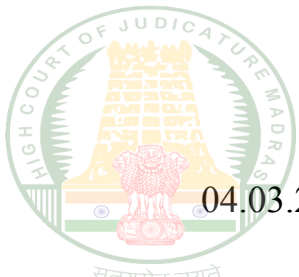
“9. Unit for appointment or discharge of reappointment:

For the purpose of appointment as full member, re-appointment as full member, reappointment or discharge in different categories each Panchayat Union shall be a Unit.”

10. Thus, the Petitioner has to be considered senior to the 4th Respondent, although the Petitioner is younger by age having born on **10.04.1984**, after 4th respondent who was born on **21.03.1971**.

11. The fact that the 4th Respondent had acquired the necessary Educational Qualification for the appointment is unnecessary as the 4th Respondent was appointed in a different Panchayat Union. That apart, the probation of the Petitioner was declared on **31.05.2008**, whereas, the probation of the 4th Respondent was declared only on **17.06.2008**.

12. The facts on record also reveal that the seniority of the Petitioner and the 4th Respondent in the was also revised in the Seniority List for the year 2014 as on 01.01.2014 pursuant to the Petitioner's Representation dated



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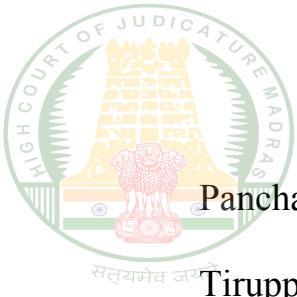
04.03.2013. Pursuant to which in the Panel for Promotion for the Year 2014 prepared with the crucial date as on 01.01.2014, the Petitioner was placed at **S.No.1**, whereas, the 4th Respondent was placed at **S.No.2**. The Panel for Promotion for the year 2014 prepared with the crucial date as on 01.01.2014 is extracted hereunder:-

வ. எண்	ஆசிரியர் பெயர்	பணிபுரியும் பள்ளி	பிறந்த தேதி	முதன் முதலில் இ.நி ஆசிரியர் பணியில் சேர்ந்த நாள்	பணி வரன்முறை செய்த நாள்	தகுதி காண்பருவம் முடித்த நாள்	மாறுதலி வந்தவர் எனில் சேர்ந்த தேதி	கல்வித் தகுதி
1	ஆ.மனோகரன், இ.நி.ஆ*	செட்டிபுத்தூர்	10.04.1984	09.12.2005	01.06.2006	31.05.2008	-----	பி.எ., பி.எட்., ஆங்
2	து.வடிவேல், இ.நி.ஆ#	பெரியாயிபாளையம்	21.03.1971	20.10.2004	01.06.2006	17.06.2008	09.12.2005	பி.எ., பி.எட்., ஆங்

* the Petitioner

the 4th Respondent

13. Although the date of appointment after successful declaration of probation will date back to the initial date of appointment under the Special Rules for the Tamil Nadu Elementary Education Subordinate Service, the fact remains that the Petitioner is senior in the Panchayat Union Middle School, Avinasi, Tiruppur District as he was appointed in the same Panchayat Union, whereas, the 4th Respondent was appointed in a different



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Panchayat Union and joined the Panchayat Union Middle School, Avinasi,

Tiruppur District by way of transfer at his bidding/request. Therefore, this

Writ Petition deserves to be allowed with a consequential relief.

14. Accordingly, this Writ Petition is allowed and the Respondents 1 to 3 are directed to implement the order revising the seniority of the Petitioner and 4th Respondent, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

17.06.2025

jas/mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 2.The District Elementary Educational Officer,
Tiruppur District, Tiruppur.
- 3.The Assistant Elementary Educational Officer,

15/17



Avinasi Panchayat Union,
Avinasi, Tiruppur District.

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