
(2007) 03 MAD CK 0098
In the Madras High Court
Case No : W.A. No. 236 of 2006

A. Mani

APPELLANT

Vs

The Director of Elementary Education and Others

RESPONDENT

Date of Decision : 09-03-2007

Acts Referred:

Constitution of India, 1950 — Article 309
Tamil Nadu Elementary Education Subordinate Service Rules — Rule 7, 8, 9
Tamil Nadu Panchayats Act, 1958 — Section 62A
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 35, 35(F)

Citation : (2007) 03 MAD CK 0098

Hon'ble Judges : P.P.S. Janarthana Raja, J;Dharma Rao Elipe, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for A. Rahul, for the Appellant; R. Janakiramulu, Spl. Govt. Pleader for R1 to R3 and R. Gandhi, for R6, for the Respondent

Final Decision : Allowed

Judgement

Dharma Rao Elipe, J.—Challenge is to the order dated 5-4-2006 passed by the learned Judge in W.P. No. 10020 of 2005, allowing the writ petition filed by the fourth Respondent herein and setting aside the order dated 2-9-2005 passed by the District Elementary Educational Officer, Theni District re-fixing the seniority of the Appellant vis-a-vis the fourth Respondent/writ-Petitioner.

2. The above writ petition was filed seeking the relief of Writ of Certiorari, to call for the records relating to the order dated 2-9-2005 passed by the District Elementary Educational Officer, Theni District, Theni, second Respondent herein, and to quash the same and consequently to forbear the first and second Respondents from promoting the Appellants and the sixth Respondent herein to the post of Headmaster of Panchayat Union Middle School without considering the Petitioner for the said post.

3. The writ-Petitioner was appointed as Secondary Grade Teacher in Kuchanoor Panchayat Union School on 24-11-1988. Her services were regularised, after

completion of the probationary period, with effect from 24-11-1990. She was promoted as Headmistress of a Panchayat Union Elementary School on 30-12-1999. Respondents 4 to 6 in the writ petition were appointed as Secondary Grade Teachers on 20-3-1984, 1-3-1985 and 15-10-1986 respectively and they were transferred, at their request, to the Kuchanoor Panchayat Union and they were placed below the Petitioner in the seniority list of the secondary grade teachers. This seniority position, according to the Petitioner, continued for nearly sixteen years. The Respondents 4 to 6 have made a representation to the second Respondent to re-fix the seniority and to place them above the Petitioner in the seniority. On the recommendation made by the second Respondent, the first Respondent revised the seniority list and placed the Respondents 4 to 6 above the Petitioner. The order passed by the first Respondent, revising the seniority list was challenged by the writ Petitioner inter alia on the grounds that no notice was issued or no opportunity was given to her before passing of the impugned order, that the Respondents 4 to 6 have not raised any objections for nearly sixteen years and that the impugned proceedings of the first Respondents could have only prospective effect.

4. The claim of the writ Petitioner was resisted by Respondents 4 to 6 and by Respondents 2 and 3 by stating that placing of the Respondents 4 to 6 in the seniority list as juniors to the Petitioner was a mistake of fact and that the revision of the seniority became necessary for rectifying the mistake. It was further pleaded that there is no limitation prescribed for rectifying such mistake and further for rectifying the mistake committed in the fixation of seniority, no opportunity of hearing or no notice was required to be given to the Petitioner. By the mistake committed in fixation of the seniority, the Petitioner should be treated as an unjust beneficiary. It was further pleaded by the Respondents 4 to 6 that since the Panchayat Union was not regular in issuing the seniority list every year, they were not aware of their seniority position and that it was only when the writ Petitioner was promoted as Elementary School Headmistress, they came to know about the seniority position and immediately they made representation to the authorities concerned for revising the seniority.

5. Learned Judge, from the seniority lists of the Secondary Grade Teachers for the year 1996, 1997, 1998, 1999, 2004 and 2005 wherein the Petitioner was shown above the Respondents 4 to 6, found that the argument of the Respondents 4 to 6 that the Panchayat Union was not regular in publishing the seniority list is unfounded. Further, referring to the circular dated 15-11-2001 issued by the first Respondent on the basis of the G.O. Ms. No. 347 dated 15-9-1998, the learned Judge held that the impugned order passed by the second Respondent in re-fixing the seniority list placing the Petitioner as junior to Respondents 4 to 6 was not only against the consistent seniority list maintained by the second Respondent and the Panchayat Union, but also against the very circular dated 15-11-2001 issued by the first Respondent. The learned Judge further held that the impugned order is also vitiated since no notice or no opportunity of hearing was given to the Petitioner before passing of the

impugned order. Relying on the judgment of the Supreme Court in *B.S. Bajwa and Another Vs. State of Punjab and Others*, , the learned Judge held that the seniority-list should not be revised after a lapse of reasonable period inasmuch as the same would unsettle the settled rights of the employees. On these grounds, the learned Judge quashed the impugned order and allowed the writ petition.

6. learned Counsel appearing for the Appellants argued that the finding of the learned Judge that the seniority list of the Secondary Grade Teachers were published every year is erroneous. It was argued that no seniority lists were prepared by the competent authorities of the educational department, that there was no publication of the seniority list every year and there was no circulation of the seniority list to the concerned teachers. learned Counsel argued that it is evident from the circular dated 15-11-2001 that despite the earlier circular dated 12-12-1995, no seniority lists were prepared, approved and published every year on the crucial date except making deletion and addition of the names of teaches who come to the new union on transfer or go out of the union. It was not the case of the official Respondents that they were regularly publishing and/or circulating the seniority list of the Secondary Grade Teachers every year. Further, the so-called seniority lists produced by the writ-Petitioner before the learned Judge were not authentic as the they are covered by the necessary proceedings issued by the competent authority, i.e. the District Elementary Officer certifying that the lists were the seniority-lists of the Secondary Grade Teachers of the concerned years. In such circumstances, the leaned Judge ought not to have relied on such seniority-lists.

7. It was further argued that inasmuch as there was no publication of seniority-list every year as per the rules and regulations, the Appellants came to know about their seniority position only on 31-12-1999, when the writ Petitioner was promoted as Elementary School Headmistress. Immediately thereafter, within the time limit, the Appellants preferred an appeal before the competent authority, but the appeal was disposed of only after a period of five years. It is for this reason that the seniority list came to be altered only after a period of sixteen years. The delay in rectifying the mistake in fixing the seniority cannot be attributed to the Appellants.

8. learned Counsel further argued that the learned Judge erred in holding that the circular dated 15-11-2001 issued by the Director of Elementary Education will have prospective effect only. Even assuming that the impugned order is vitiated on the ground that no prior notice was issued to the writ Petitioner before altering the seniority position, the matter may be remitted back to the District Elementary Educational Authority for de novo consideration after hearing all parties concerned.

9. Learned Government Pleader appearing for the official Respondents argued that as per Rule 9 of the Tamil Nadu Elementary Education Subordinate Service Rules, each Panchayat Union is a single unit and in the proceedings dated

15-11-2001 issued by the Director of Elementary Education it has been clarified that when any Secondary Grade Teacher, who has completed the period of probation, is transferred from one Panchayat Union to another, he will be placed junior to those teachers who have completed their period of probation and working in the school and in case of transfer of a Secondary Grade Teacher, who has not completed his period of probation, he will be placed junior to the Secondary Grade Teachers who have not completed their probation. In the present case, the writ-Petitioner/fourth Respondent was appointed as Secondary Grade Teacher in Channamanur Panchayat Union on 24-11-1988 and completed her probation on 23-11-1990. The Appellant and Respondents 4 and 6 in the writ petition were, who have completed their probation on 28-2-1987, 19-3-1986 and 13-10-1988 respectively and transferred to the Chinnamanur Panchayat Union on 15-10-1990, 17-8-1989 and 21-11-1990 respectively. Therefore, when the Appellant and the Respondent 4 and 6 joined Chinnamanur Panchayat Union School, the writ Petitioner/fourth Respondent was not an approved probationer. As per the proceedings dated 15-11-2001 issued by the Director of Elementary Education, since on the date when the Appellant and the Respondents 4 and 6 in the writ petition, who were the approved probationers, were transferred to the Chinnamanur Panchayat Union, the writ-Petitioner was working as probationer, they should have been placed above the writ-Petitioner and below the approved probationers of the Chinnamanur Panchayat Union, but, by mistake, they were placed below the writ Petitioner. The mistake in fixing the seniority has come to the knowledge of the Appellant and Respondents 4 and 6 only when the writ Petitioner was promoted as Headmistress on 30-12-1999. On their representation to the authorities concerned for revision of the seniority list, the impugned order has been passed. By such representation, the affected parties did not request for the demotion of the writ Petitioner or reduction in pay of the writ Petitioner. Further, in the impugned order it has been clearly stated that the Appellant and Respondents 4 and 6 are not entitled to claim any monetary benefits consequent to the revision of the seniority, but preference would be given to them in the matter of promotion to the post of Elementary School Headmaster in the year 2005. The impugned order, therefore, did not in any way affect the writ Petitioner's right. The seniority was revised in order to ensure that the Appellant and Respondents 4 and 6, who were already affected by the mistake committed in fixing their seniority when they were transferred to Chinnamanur Panchayat Union should not be affected in the next promotion also. The period of limitation of three years prescribed in Rule 35(f) of the Tamil Nadu State and Subordinate Service Rules is not applicable to cases of rectifying the orders resulting from mistake of facts and inasmuch the present case is one of rectification of mistake committed in fixation of seniority of the Appellant and Respondents 4 and 6, Rule 35(f) has no application to this case. Learned Special Government Pleader further argued that as per the rules, the seniority list of the teachers working in the Panchayat Union School, Chinnamannur Range was prepared every year based on the position prevailing as on 1st January of each year and a copy of the list was affixed on the notice board in the office of the

Assistant Elementary Educational Officer for reference of the teachers and another copy was made available in the office of the Assistant Elementary Educational Officer.

10. learned Counsel appearing for the sixth Respondent submitted that though notice of the writ petition was served on the sixth Respondent, he was not interested in opposing the writ petition and in fact did not oppose the writ petition. learned Counsel pleaded that in such circumstances, the imposition of costs of Rs. 2000/- on the sixth Respondent by the learned Judge may be deleted.

11. Heard the learned Counsel for the Appellant and the learned Special Government Pleader appearing for the official Respondents and the learned Counsel appearing for the sixth Respondent.

12. The writ Petitioner was appointed as a regular Secondary Grade Teacher in Chinnamanur Panchayat Union school on 24-11-1988, completed her probationary period on 23-11-1990 and promoted as Headmistress of Elementary School on 30-12-1999. The Appellant and Respondents 4 and 6 in the writ petition were appointed as Secondary Grade Teachers on 1-3-1985, 20-3-1984 and 15-10-1986 respectively; completed their probation on 28-2-1987, 19-3-1986 and 13-10-1988 respectively; they were transferred on their request to the Chinnamanur Panchayat Union on 15-10-1990, 17-8-1989 and 21-11-1990 respectively. On these factual position, there is no dispute between the parties.

13. The claim of the Appellant and Respondents 4 and 6, in short, is that as on the respective date of their transfer to Chinnamanur Panchayat Union school, they were "approved probationers" whereas the writ-Petitioner was a "probationer" and as per the rules/guidelines relating to the fixation of seniority on transfer of approved probationers from one Panchayat Union school to another Panchayat Union school, they should be placed immediate juniors to the "approved probationers" working in the Chinnamannur Panchayat Union, but their seniority was wrongly fixed by placing them below the Petitioner, who was a probationer at the relevant time. According to them, their seniority position vis-a-vis the writ Petitioner came to their knowledge only on 30-12-1999 when the writ Petitioner was promoted as Elementary School Headmistress. On their representation for revision of their seniority, their seniority has been revised by the authority concerned, which has been challenged by the writ Petitioner and set aside by the learned Judge. The correctness of the order passed by the learned Judge is assailed in this writ appeal.

14. We have carefully gone through the relevant rules and the circulars issued by the authorities concerned governing the fixation of seniority of the teachers who are transferred from one Panchayat Union to another Panchayat Union.

15. The service conditions of the teaching and non-teaching staff of the Panchayat Union schools are governed by the Elementary Educational Subordinate Service Rules (in short "the Rules"), framed by the Government in

exercise of the powers conferred by the proviso to Article 309 of the Constitution of India read with Section 62-A of the Tamil Nadu Panchayats Act, 1958. Rule 7 prescribes that every person appointed to any category by direct recruitment shall from the date on which he joins duty be on probation in such category for a total period of two years. Rule 8 provides for the preparation of annual list of approved candidates. Rule 9 provides that for the purpose of appointment as full member, reappointment or discharge in different categories, each Panchayat Union shall be a unit.

16. The issue for consideration in these writ appeals is whether the order impugned in the writ petition is passed in accordance with law dated 2.9.2005, wherein the Elementary Educational Officer passed the impugned order on appeal submitted by the Appellants, placing the Appellants above the writ Petitioner in the seniority list of Elementary School Headmaster.

17. It is an admitted case of Petitioner that though she was appointed on 24.11.1988, and completed the probation on 23.11.1990, the Appellants seniority were fixed above the writ Petitioner on the ground following the instructions of the Government issued on 11.10.2005 and the proceedings of the Director of Tamil Nadu Elementary Education dated 15.11.2000 stating that while fixing the seniority for secondary grade teachers who are transferred from one union to new union, if such teacher had completed probation as on the date of joining duty in the new union, he/she should be placed below the names of the teachers who have completed the probation. If the said teacher has not completed the probation, he should be placed as junior to the teachers who have not completed the probation. Further, it is stated that on the basis of the instructions mentioned above, the teacher in Sl. No. 1 shall be placed as junior to the teachers who have completed the probation in the seniority list dated 1.1.1989 and the teachers in Sl. Nos. 2 and 3 shall be placed as juniors to the teachers who have completed probation in the seniority list dated 1.1.1990. Further the teacher in Sl. No. 4 shall be placed as junior to the teachers who have completed probation in the seniority list dated 1.1.1991. Hence, the seniority in the post of secondary grade teacher is fixed as Sl. Nos. 1, 2, 3 and 4. But the teachers in Sl. Nos. 1 and 4 have joined as Elementary School Head Master in the year 1999, whereas the teachers in Sl. Nos. 2 and 3 have joined as Elementary School Head Master only in 2002 and instructions were issued with regard to the drawing of seniority list in the post of Elementary School Head Master in the proceedings of the Director dated 5.7.2001. It is mentioned in the above instructions that the seniority in the post of Elementary School Head Master should not be fixed on the basis of date of joining in the post of Elementary School Headmaster. On the other hand, the seniority in the post of Elementary School Head Master shall not be determined on the basis of the seniority in the lower post namely Secondary Grade teacher. Hence, while fixing of the seniority for the post of primary school Head Master, the seniority in the post of secondary grade teacher should be taken into account.

18. As per Rule 35(F) of Tamil Nadu State and Subordinate Service Rules, the appeal has to be preferred within three years from the date of seniority approved at once and the appeals preferred after three years will not be entertained. It is seen that the representations have been made right from the year 2001. Therefore, it is ordered that in the seniority list for the post of Elementary School Head Master for the year 2005, the seniority of the Teachers in Sl. Nos. 1 to 3 shall be fixed as 6A, 6B and 6C and the teachers in Sl. Nos. 1 to 3 are not entitled to have any service and monetary benefits on the basis of the revised seniority and they are entitled to have the revision of seniority list of the year 2005, in the post of Elementary School Headmaster.

19. Here it is to be noted that if any mistake is committed while fixing the seniority, the provision of limitation to file an appeal u/s 35(f) of Tamil Nadu Subordinate Service Rules is not applicable. Therefore, it is seen from the facts and circumstances of the case that at the time of transfer of the Appellants to Chinnamannur Panchayat Union, the writ Petitioner was the probationer and the Appellants have already completed the probation. Therefore, at the time of fixing seniority, a mistake was committed by placing the Appellants below the writ Petitioner and that mistake was rectified by the impugned order passed in the writ petition.

20. Moreover, it has to be considered that the seniority list was not prepared as per the instructions of the Director of Primary Education, Chennai dated 12.12.1995, wherein in Clause 3 it was stated that according to Rule 9 of Elementary Educational Subordinate Service Rules, each Panchayat Union is considered as a separate unit for promotion. Hence, the seniority list of the teachers working in that union will be maintained at the union level only and accordingly, the seniority list has to be prepared by the appointing authority. Though the list is prepared by the Assistant Elementary Educational Officer, as the official head of the respective union, the District Elementary Educational Officer i.e. the appointing authority should verify and approve the list. But, since promotion is given on the basis of the list published at the level of Assistant Elementary Educational Officer, chances of making many mistakes arise. Hence, from 1996 the District Elementary Educational Officer should obtain the seniority list from the Assistant Elementary Educational Officer verify the same by comparing with the last year's list, approve it and again it should be sent to the teachers for circulation through the Assistant Elementary Educational officer.

21. But, there is no whisper in the counter affidavit filed by the official Respondents that the procedures contemplated under Clause 3 of the proceedings issued by the Director of Primary Education, Chennai dated 12.12.1995 was followed. Therefore, the question of raising objections with regard to limitation of filing of the appeal against the seniority list which was prepared in the year 1989 and the appeal is filed in the year 2001 when they came to know the placing in the seniority list below the writ Petitioner after she got promoted does not arise. Therefore, once the seniority list is not prepared as

per instructions, it should be accepted that Appellants have no knowledge of placing them below the writ Petitioner, the mistake committed can be rectified as per Rule 35(f) of the State and Subordinate Service Rules.

22. With regard to the judgment relied on the writ Petitioner in B.S. Bajwa and Another Vs. State of Punjab and Others, , it is considered in that case that the seniority list was questioned after a lapse of 12 years and meanwhile promotions were given as Executive Engineers, Selection Grade and thereafter, promoted as Superintending Engineer. In those circumstances, it was held that appeal was not filed within the reasonable time. But, in the present case, since they have no knowledge of promotion given to the writ Petitioner from the post of Secondary Grade Teacher to that of Headmistress and in the absence of any communication about the seniority list prepared by the Respondent, the appeal filed by the Appellants cannot be thrown out on the ground of laches. Moreover, it has to be treated as the mistake, which can be considered under Rule 35(f) of the State and Subordinate Service Rules.

23. Even without going into other aspects of the issues involved in the writ petition, it is an admitted case that the writ Appellants were appointed as Secondary Grade Teacher on 20.3.1984, 1.3.1985, 15.10.1986, their probation was declared on 28.2.1987, 19.3.1986 and 13.10.1988 respectively, whereas the writ Petitioner was transferred to Chennamannur Panchayat Union on 24.11.1988 and her probation was completed on 23.11.1990. Therefore, it is clear that the probation of the Appellants were declared much prior to the declaration of probation of the writ Petitioner. Therefore, when the Appellants were transferred from other Panchayat Unions to Chennamannur Panchayat Union, the official Respondents should have placed them above the writ Petitioner on the basis of the date of completion of probation and in pursuance of the instructions given by the Director of Primary Education dated 12.12.1995. Therefore, the Respondents have committed illegality at the time of transfer of Appellants from other Panchayat Unions to Chennamannur Panchayat Union.

24. Under such circumstances, the present impugned order is not in consonance with Clause 6 of the proceedings of the Director of Primary Education, Chennai dated 12.12.1995, wherein it was contemplated that as the posts other than Secondary Grade Teachers are filled up through promotions, transfers from one union to another union are allowed only for the post of Secondary Grade Teachers. The seniority of such teachers coming on transfer, if he/she is an approved probationer, he/she will be placed below the approved probationer working in that union (on the date of joining on transfer) and if he/she has not completed his/her probation, he/she will be placed below the teachers who have not completed probation in the transferred union. This is based on Government letter No. 38102/S2/95 dated 14.10.1995. Moreover, as seen from the impugned order, the interest of the writ Petitioner is very much protected by not reverting her from the post of Headmistress to that of Secondary grade Teacher by virtue of the revision of seniority. On the other hand, the Appellants were deprived of

monetary benefits on the basis of the revised seniority and they are entitled to have the revised seniority list of the year 2005 in the post of Elementary School Headmaster. Therefore, no prejudice is caused to the writ Petitioner.

25. The learned Counsel for the Petitioner in support of his contention on the question of delay, relied on the decision of the Supreme Court in *S.B. Dogra Vs. State of Himachal Pradesh and Others*, . He also relied on the judgment of the Supreme Court in *Hindustan Lever Ltd. Vs. Colgate Palmolive (I) Ltd. and Another*, with regard to counting of in service period for the purpose of seniority, wherein it has been held that the training period will be treated as in service period only for the purpose of getting pay and not for the purpose of seniority. Therefore, this decision is also nothing to do with the facts and circumstances of the present case.

26. We are satisfied that in the absence of preparation of the seniority list, from the date of knowledge of promotion given to the writ Petitioner, the Appellants have filed the appeal, which is well within the reasonable time, as contemplated in the instructions of the Director of Primary Education, Chennai, and as stated above the ground of delay cannot be applicable to the facts and circumstances of the case. Therefore, the judgments relied on by the writ Petitioner cannot be relied on.

27. As regards the decision in *K.P. Sudhakaran and Another Vs. State of Kerala and Others*, is concerned, the Hon"ble Supreme Court held that while considering Rule 27 of Kerala State and Subordinate Services Rules, 1958, it was amended by the Government Order dated 13.1.1976 inserting a proviso to Clause (a), providing for the consequences of an "own-request" transfer. The said proviso categorically provided that the seniority of an employee getting transferred at his own request to another unit within the same department or to another department will be determined with reference to the date of his joining duty in the new department. This proviso is an exception to the general rule contained in Clause (a) of Rule 27 that seniority of a person shall be determined by the date of the order of his first appointment. After Rule 27(a) was amended by introducing a proviso providing for the consequences of "own-request" transfers, the earlier Government Orders dated 27.5.1971 and 2.1.1961, in relation thereto ceased to apply. Thus, when the proviso to Rule 27(a) is applied, the seniority of the transferred LDCs has to be reckoned only from the date of their joining duty in the new unit or district and they are not entitled to count their service prior to the date of their transfer on their request. But it is held by the Supreme Court that the matter is however governed by the relevant Service Rules.

28. On the other hand, in the present Service Rules, when a teacher who has completed his/her probation is transferred from one Union to another Union, has to be placed below the approved probationer of that Union, instead of placing him/her below the person whose probation was not declared and as far as the writ Petitioner is concerned, admittedly, the writ Appellants probation were declared even much prior to the declaration of probation of the writ Petitioner.

Therefore, the above said judgment also would not help the writ Petitioner.

29. Therefore, we are unable to appreciate the contention of delay on the basis of the Hon"ble Supreme Court decision cited by the writ Petitioner in entertaining the appeal in the year 2005 to revise the seniority list as per the instruction of the Director.

30. We are not able to appreciate the reasons given by the learned Single Judge. Accordingly, the writ appeals are allowed and the order passed in W.P.(MD) No. 10020 of 2005 dated 05.04.2006 is set aside. No costs.