

(2011) 10 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 7114 of 2009

S. Kasthuri

APPELLANT

Vs

The Director of Elementary Education, DPI Complex, College
Road, Chennai-600006 and Others

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 35

Citation : (2011) 10 MAD CK 0119

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

**Advocate : V.Suthakar, for the Appellant; V. Subbiah, Spl. G.P. for RR1 to 3 and
Mr. R. Shivakumar for RR4 to 6, for the Respondent**

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has come forward to file the present writ petition seeking to challenge an order dated 11.3.2009 passed by the third respondent Assistant Elementary Education Officer, Mayiladuthurai and after setting aside the same, to restore the seniority of the petitioner in the cadre of Secondary Grade Teachers in the Municipal school over and above respondents 4 to 9 based on the date of her joining duty, i.e., 10.6.2002 as mentioned in the seniority list published on 1.1.2008.

2. The writ petition was admitted on 20.4.2009. Pending the writ petition, this court had granted an interim stay and subsequently, the interim stay was extended from time to time and was made absolute on 25.10.2010. On notice from this court, the second respondent has filed a counter affidavit, dated 16.6.2009.

3. It is seen from the records that the petitioner was appointed on 20.07.1988 in

the Municipal School at Thiruvapur. She was transferred to Mayiladuthurai Municipal School on 5.8.1994 within Mayiladuthurai range. During the year 2001-02, there was no required students. Hence 13 teachers were found surplus. In the light of the Government order in G.O.Ms.No.525, Education Department, dated 23.7.1997, those 13 teachers among the junior most in the seniority list were transferred on re-deployment. The fourth respondent was ranking in the seniority list at No.1 and the other respondents 5 to 9 were ranking in serial Nos. 2 to 6. The petitioner was only in Serial No.10. Her original seniority will exist in her parent municipality union and that the seniority of the re-deployed teachers will be restored to their original seniority in the parent union whenever they were reabsorbed as per the original seniority. The writ petitioner got transferred to the municipal school on her willingness due to her family circumstances before the clarification was issued by the Government. But subsequent re-absorption of teachers in various vacancies in the municipal schools were done as per the guidelines issued by the Government.

4. It is stated that as per the guidelines issued by the Director, a seniority list of Secondary Grade Teachers for the year 2009-2010 was prepared and it was prepared on the basis of the date of first joining on a regular time scale and those who had joined duty on transfer from another union, their seniority was fixed below the seniority of approved probationer and that those who were re-deployed due to want of vacancy and retransferred to parent union, their seniority will be placed at the original place from which they have been transferred. Hence the third respondent had prepared a seniority list on the basis of these guidelines. The 8th respondent had filed a writ petition being W.P.No.11463 of 2008 to consider her representation. It was pursuant to the directions of this court, the seniority list was prepared and promotions were also effected. The petitioner made a request only after the approval of the seniority list. Hence her request was rejected.

5. The contention of the petitioner was that Rule 35(f) of the Tamil Nadu State and Subordinates Rules was not followed. In the counter affidavit, in paragraph 7, a tabular column was given, wherein it is seen that several respondents were seniors to the petitioner both on the date of regularization as well as on the date of joining and that in the panchayat union seniority, all of them were seniors to the petitioner. It was also stated that the date of completion of probation for the fourth respondent was 31.5.1990, whereas the petitioner had completed probation only on 19.7.1990. She had joined the municipal school only on 5.8.1994 and that too on request. She is not at all senior either on the date of first date of joining or on the date of regularization or on the date of completion of probation or on the date of joining in the municipal school at Mayiladuthurai.

6. Mr. V. Suthakar, learned counsel for the petitioner claims that his client was working from the year 1988 and that even though respondents 4 to 9 were shown as juniors in the seniority list earlier, after a lapse of four years they were shown as seniors. The official respondents have explained as to how respondents

4 to 9 were seniors to the petitioner and that they had strictly implemented the Government guidelines in the matter of drawal of seniority list.

7. In this context, it is necessary to refer to a judgment of the Supreme Court in Dhan Singh and others Vs. State of Haryana and others, and in paragraph 10, the Supreme Court had observed as follows:

10.... The State could amend the 1965 Rules and withdraw the concession in exercise of the power conferred under Article 309 of the Constitution. It is open to the State to lay down any rule for determining seniority in service and the court cannot interfere unless it results in inequality of opportunity among the employees belonging to the same class. When a rule is challenged as denying equal protection, the question for determination by the court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of protection does not per se amount to discrimination within the inhibition of equal protection clause under Article 14. To attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the legislature has in view. The court has to examine whether the classification can be deemed to rest upon differentia discriminating the persons or things grouped from those left out and whether such differentia has a reasonable relation to the objects sought to be achieved irrespective of whether the rule is intended to apply to person or thing or to a certain class of persons or things. Therefore, the policy or the object of the legislation are relevant consideration.

8. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs.