

(1980) 07 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No's. 2901, 2902, 2988 and 2989 of 1980

S.K. Sundaram, Headmaster, Govt Higher Secondary School,
Poonamallee and others

APPELLANT

Vs

The Director of School Education Madras

RESPONDENT

Date of Decision : 31-07-1980

Acts Referred:

Citation : (1980) 07 MAD CK 0029

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : T. Martin, for the Appellant; Chinnaswami for Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, J.—All these writ petitioners arise out of a common order and but for the fact that the petitioners are different the issue involved is one and the same. The facts are as under -In G.O. Ms. 289, Education, dt. 20th February, 1971, sanction was accorded for the creation of 80 posts of Gazetted Headmasters in the Board High Schools, These posts were ordered to be filled up taking into consideration the seniority and merit of the Head-masters working in all the Government Board High Schools on a State level basis. However, in the interest of exigencies of services, these gazetted posts were filled up temporarily on district seniority basis, pending concurrence of the Tamil Nadu Public service Commission. Subsequently, the Government, in their Order Ms. No. 18491, Education, dated 31st October 19(sic)4, decided that for appointment to the posts of Gazetted Headmasters in Government (B Wing) High Schools, the seniority is to be reckoned only on a State-wise basis in the case of all Gazetted Posts in the State service. Accordingly, the Government directed that State wise seniority be adopted for purposes of appointment to the posts of Gazetted Headmasters in the Government (B Wing) High Schools. The petitioners were appointed as Gazetted Headmasters temporarily in the interests of exigencies of service, with

reference to district seniority. On the basis of that appointment, it was not open to them to claim any right to regular appointment, According to the Service Rules, at the time of their appointment, their turn had not arisen if reckoned on the basis of the State seniority. Consequent on the upgrading of 373 Government schools as Government Higher Secondary Schools, the Government ordered in G.O.Ms. 1091, Education, dated 15th June, 1978, that the following principle be adopted for inducting the High Schools the teaching staff for handling Higher secondary classes-

- (i) All the Gazetted Headmasters working in the Government High Schools now upgraded as Higher Secondary Schools shall continue as Headmasters of the Higher Secondary schools irrespective of their qualification and will draw pay in the present scale till they become fully qualified.
- (ii) Gazetted Headmasters working in (a) the Government High Schools not upgraded as Higher Secondary Schools and (b) Government Teacher Training Institute shall be transferred and posted as - Headmasters of the Higher Secondary schools.

Even though the petitioners are not qualified to hold the posts of Gazetted Headmasters as per the Service Rules, while upgrading the High Schools, into Higher Secondary schools they were allowed to continue as Headmasters of Higher Secondary Schools, as the question of approving the State Level seniority of such Headmaster was under the consideration of the Government and as they were holding the appointment of Gazetted Headmasters temporarily under Rs. 10/- (a) (i) of the General Rules for the State and Subordinate services, the Government have passed orders in their letter, Ms. No. 94, Education, dt. 21th January, 1980, informing the first respondent (Director of School Education) to approve the seniority list of such Headmasters. The post of Gazetted Headmasters in the Government Board Schools comes within the purview of the Tamil Nadu Public Service Commission. The Commission is the competent authority to select candidates for regular appointment of such posts. As the petitioners' turn for such appointment had not come up, as per the State level seniority and many persons senior to them are working as Headmasters of ordinary High schools in the non gazetted status, they could not be continued as Headmasters of Higher Secondary Schools irrespective of their qualifications. It was under these circumstances, the impugned order of the Director of School Education, dated 4th May, 1980, came to be passed. The ultimate portion of the order reads-

In these circumstances the Headmasters except those who do not possess post graduate qualifications will be transferred and posted as Headmasters of ordinary High Schools In the interests of administration for which orders of Joint Director of School Education (Personnel) will issue separately.

Mr. T. Martin, learned counsel urges only the following two points-

1. In so far as the petitioners was obliged to forego their district level seniority,

presently to revert them and thereby deprive them of the benefit of the special pay would be a reversion which could be done only after notice to the petitioner.

2. Similar treatment is not accorded to persons working as Headmasters in Aided High schools.

2. As against these arguments, the learned Government Pleader would submit that as stated in the counter-affidavit there is no reversion at all, that this is merely a case of transfer from one post to another on an identical scale of pay and therefore, it is not a punishment either, that in as much as the petitioners are not qualified to hold the posts of Gazetted Headmasters, it is not open to them to take shelter under the protection under G.O. Ms. 1091, Education, dated 15th June, 1978. He would further submit that the second argument of the petitioners' counsel also has to be rejected for the reason that the conditions of the Headmasters of Government and Aided High Schools are different and therefore, the pensioners cannot compare themselves on a par with them.

3. I have given my careful consideration to the above arguments. I do not think that the petitioners have any case whatever. The petitioners have not been reverted or reduced to any lower rank by the impugned order of transfer, as Headmasters of ordinary High schools. In fact, there is no reversion at all. They were not appointed regularly as Headmasters of Higher Secondary Schools. It also requires to be remembered in this connection that they were not qualified to hold the posts. As per the orders in G.O. Ms. 1050, Finance (Pay Commission) dated 5th October, 1978, the scales of pay of both. Gazetted and Non-gazetted Headmasters have been integrated into a single scale of pay, viz., Rs. 675-1200. The posts of headmasters of Higher Secondary Schools carry a scale of Rs. 7501-350. Since they were permitted to draw the scale of pay while continuing as Headmasters of Higher Secondary Schools, for which post they were not qualified, the orders issued under the impugned proceedings transferring the petitioners as headmasters of ordinary High Schools do not make the petitioners liable for any loss either in status or in emoluments. If that be so, the question of giving them reasonable opportunity does not arise. It also requires to be added that these transfers and postings are ordered in the exigencies of service when there is no dearth of qualified post graduate Headmasters who would be readily entitled to get the posts of Headmasters of the Higher Secondary Schools. The fact that the petitioners were obliged to lose their district level seniority is neither here nor there, because they gained a decided advantage when they were appointed as Headmasters, under R. 10(a) (i) of the General Rules of the Higher Secondary schools, to which post they would not be entitled to be posted if reckoned on the basis of State wise seniority. As regards the second contention, as the counter affidavit correctly states, the service conditions of Headmasters of Government and Aided High schools are totally different. The petitioners cannot compare themselves with those Headmasters and make out a case of discrimination. Consequently, this argument also is rejected. Thus, I conclude that these writ petitions carry no merit. Accordingly, they are dismissed. No costs.