

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

C O R A M

THE HONOURABLE MR.JUSTICE T.RAJA

Review Application Nos.173 and 174 of 2016 in
W.P.Nos.20075 and 20076 of 2007

1.Member-Secretary,
Teacher Recruitment Board,
4th floor, E.V.K.Sampath Building,
College Road, Chennai – 6.

2.The Director of School Education,
DPI Campus, College Road,
Chennai – 6.

3.The Joint Director of School Education (personnel),
DPI Campus, Collge Road,
Chennai – 6.

... Applicants in both applications

-Vs.-

1.M.Komala

... Respondent in Rev.Appl.No.173/16

2.A.Palani

... Respondent in Rev.Appl.No.174/16

Common Prayer:- Review Applications filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the common order dated 16.02.2015 made in W.P.Nos.20075 and 20076 of 2007.

For Applicants

: Mr.K.Venkataramani, AAG
Assit. by Mr.A.N.Thambidurai, Spl.GP

For Respondent

: Mr.P.Ganesan
for M/s.C.S.Associates

COMMON ORDER

These Review Applications have been filed to review the common order dated 16.02.2015, passed in W.P.Nos.20075 and 20076 of 2007.

2. The applicants in these review applications are the respondents and the respondents are the writ petitioners in the writ petitions. The writ petitions were allowed quashing the impugned order therein compelling the petitioners to give their consent to work in the lower post with lesser pay.

3. The only contention of the learned Additional Advocate General is that the post of Physical Director Grade-II has to be filled up only in the following mode:

- i) Promotion from among the Physical Education Teachers (or)*
- ii) Transfer from any post in the service on an identical scale of pay (or)*
- iii) Promotion from any post in the service on a lower scale of pay (or)*
- iv) Recruitment by Transfer from any other service*
- v) If no qualified and suitable candidate is available for appointment (i) to (iv) above, by direct recruitment.*

In view of the above, it is contended, the first applicant / Member Secretary, having found that the promotees were affected due to the appointment of the writ petitioners by direct recruitment, has rightly issued G.O.Ms.No.253, Education Department, dated 05.12.2006, stating that the petitioners should be

accommodated as Physical Education Teachers at a consolidate pay of Rs.3000/- per month which carries the regular time scale of pay of Rs.4500-125-7000. However, these facts were not properly brought to the notice of this Court while disposing of the writ petitions

4. On the other hand, learned counsel appearing for the writ petitioners brought to the notice of this Court a Government Order passed in G.O.Ms.No.753, Education Department, dated 16.07.1985, which is filed by the Review Applicants herein in their typed set of papers. From the said G.O., it is seen that the post of Physical Directors can be filled even by direct recruitment. For better appreciation, relevant portion of the said G.O. is extracted below:-

Class VI

1) Regional Inspectors of Physical Education and Physical Directors	<i>i) Promotion from among the Physical Education Teachers, (or)</i> <i>ii) Transfer from any post in the service on an identical scale of pay; (or)</i> <i>iii) Promotion from any post in the service on a lower scale of pay; (or)</i> <i>iv) Recruitment by transfer from any other service;</i> <i>v) If no qualified and suitable candidate is available for appointment (i) to (iv) above, by direct recruitment</i>
2) Physical Education Teachers	<i>i) Direct Recruitment; or</i> <i>ii) Promotion from any post in the service, on a lower scale of pay; or</i> <i>iii) Transfer from any post in the service on an identical scale of pay; or</i> <i>iv) Recruitment by transfer from any other service.</i>

From the above said tabular column, it is clear that the post in question can be filled up even by direct recruitment. Thus, the contention of the learned Additional Advocate General that the writ petitioners were wrongly appointed by direct recruitment without giving way to the promotees is wholly misconceived. Secondly, when the respondents / review applicants herein filed their counter affidavit in the writ proceedings, no such plea was raised stating that the post in question was promotional post, therefore, no such post could be filled up by direct recruitment. Thirdly, no error apparent on the face of the record was indicated to me

5. Further, it is settled legal position that the Review Court does not sit in appeal over its own order and rehearing of the matter is impermissible in law, as review is not an appeal in disguise. The power of review can be exercised for correction of a mistake, but not to substitute a view and such power can be exercised within the limits of the statute dealing with exercise of power. Therefore, in the absence of any error apparent on the face of the record, this Court is not inclined to review the order passed by this Court. In such view of the matter, the Review Applications stand dismissed. No Costs.

20.12.2016

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T.RAJA, J.,

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