



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2020

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WEB COPY

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

W.P. (MD)No.19551 of 2020
and
W.M.P. (MD)No.16285 of 2020

P.Jeyakodi

...Petitioner

Vs

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar District.

3.The District Educational Officer,
O/o.The District Educational Officer,
Collectorate Complex, Virudhunagar District.

4.The Secretary,
Mallankinaru Nadarkal MSP Senthilkumara
Nadar Higher Secondary School,
Mallankinaru, Virudhunagar District.

...Respondents

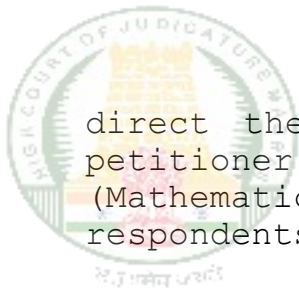
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent vide Na.Ka.No.524/A2/2020 dated 02/03/2020 and quash the same and consequently to direct the fourth respondent to forward the proposal in respect of petitioner's incentive increment for having acquired M.Sc., (Mathematics) degree to the 2nd and 3rd respondents and direct the 2nd and 3rd respondents to approve the same within a time frame.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For R1 to R3 : Mr.A.Thiagarajan
Government Advocate

ORDER

This Writ Petition is filed to quash the impugned order passed by the 3rd respondent in Na.Ka.No.524/A2/2020, dated 02.03.2020, to

<https://hcservices.ecourts.gov.in/hcservices/>



direct the 4th respondent to forward the proposal in respect of petitioner's incentive increment for having acquired M.Sc., (Mathematics) degree to the respondents 2 and 3 and to direct the respondents 2 and 3 to approve the same.

2. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. The main grievance of the petitioner is that she has completed M.Sc., (Mathematics) degree and hence, she is entitled to get incentive increment. However, the same was denied to the petitioner stating that prior permission was not obtained for studying the said degree.

4. The learned counsel appearing for the petitioner submitted that prior permission for studying any degree is not required and it will not be a bar for granting incentive increment. In this regard, the learned counsel for the petitioner has referred to the order of this Court in W.P.(MD).No.14085 of 2015, dated 26.11.2020, wherein, the learned single Judge has followed the judgment of the Division Bench of this Court reported in **(2015) 6 MLJ 315 (Director of Elementary Education, Chennai vs. G.Vijayalakshmi and another)** and submitted that as per the law laid down by this Court, there is no requirement to get prior permission for undergoing higher studies.

5. The learned Government Advocate appearing for the respondents 1 to 3 submitted that as per G.O.(Ms.).No.944, Education (D2) Department, dated 29.07.1989, the petitioner has to get prior permission for undergoing higher studies.

6. In reply, the learned counsel appearing for the petitioner submitted that the said G.O. has been set aside by this Court holding that the G.O., cannot override the Act. Therefore, the G.O., is not applicable to the facts of the present case.

7. On perusal of the said judgment, it appears that there is no need to get any prior permission for undergoing higher studies. Paragraph Nos.12 and 13 of the said judgment is as follows:

"12. In the judgment reported in **(2015) 6 MLJ 315, Director of Elementary Education, Chennai, vs. G.Vijayalakshmi and another**, relied on by the petitioner, the Division Bench of this Court held as follows:-

"35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff in the schools, recognised and governed by



the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion or substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamilnadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil



Nadu Recognised Private Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in so far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of repetition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973.''



13.The above judgment is squarely applicable to the present facts and circumstances of the case. Merely because the petitioner has not obtained prior permission from the Director of School Education for joining the correspondence course, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner is entitled to incentive increment."

8.The present issue is squarely covered by the above judgment and the issue is no more *res integra*. Therefore, the Writ Petition is allowed and the impugned order passed by the 3rd respondent, dated 02.03.2020 is quashed. Consequently, the 4th respondent is directed to forward the proposal in respect of the petitioner's incentive increment to the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order and the 3rd respondent is directed to sanction the incentive increment to the petitioner for acquiring M.Sc (Mathematics) degree, with effect from the date on which the degree is completed, within a period of eight weeks thereafter. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-I)

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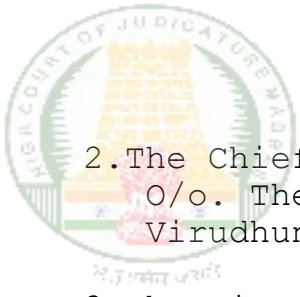
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.



2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar District.

3.The District Educational Officer,
O/o.The District Educational Officer,
Collectorate Complex, Virudhunagar District.

+1 CC to Mr.D.SHANMUGARAJA STHUPATHI, Advocate SR.No. 27112
+1 CC to Mr. Special Government Pleader, SR.No. 27254

W.P. (MD)No.19551 of 2020

23.12.2020

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