



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2020

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos. 552, 553, 554, 555, 556 and 557 of 2014

A.Rajasekaran	... Petitioner in WP(MD)No.552/2014
R.Vijayakumar	... Petitioner in WP(MD)No.553/2014
S.Alexis	... Petitioner in WP(MD)No.554/2014
K.I.Dhorai	... Petitioner in WP(MD)No.555/2014
R.Rangaraj	... Petitioner in WP(MD)No.556/2014
M.Sundaresan	... Petitioner in WP(MD)No.557/2014

Vs.

- 1.The State of TamilNadu,
Rep. by its Principal Secretary to Government,
School Education Department,
St.George Fort, Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai.
- 3.The Joint Director of School
Education (Higher Secondary),
College Road, Chennai.
- 4.The Chief Educational Officer,
Tiruchirappalli District.
- 5.The District Educational officer,
Tiruchirappalli District. ...Respondents 1 to 5
(in all WPs)
- 6.The E.R. Higher Secondary School,
Rep. by its Secretary & Correspondent & Headmaster,
Thillai Nagar,
Tiruchirappalli. ... Respondent in WP(MD)
No.552/2014
6. The Boys Higher Secondary School, Rep. by its Secretary,
Srirangam, Trichy. ... Respondent in WP(MD)
No.553/2014



6. R.C. Higher Secondary School,

Rep. by its Correspondent & Headmaster, Trichy-620 001.

... Respondent in WP(MD)
No.554/2014

WEB COPY

6. The Bishop Heber Higher Secondary School,

Rep. by its Correspondent, Trichy.

... Respondent in WP(MD)
No.555/2014

6. The National College Higher Secondary School,

Rep by its Secretary, Trichy.

... Respondent in WP(MD)
No.556/2014

6. The K.A.P.V. Higher Secondary School,

Rep. by its Correspondent & Headmaster,

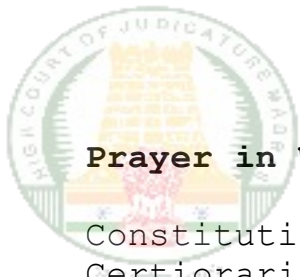
Thillai Nagar, Tiruchirapalli.

... Respondent in WP(MD)
No.557/2014

Prayer in WP(MD)No. 553/ 2014 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a **Writ of Certiorarified Mandamus**, calling for entire records relating to the impugned proceedings of the 2nd respondent in his proceedings in மு.மு.எண்.14601/W5/E1/2009, dated ...12.2013 and quash the same as illegal and consequentially to direct the 2nd respondent herein to regularize the services of the petitioner as Grade I Physical Director (Higher Secondary) on par similarly placed persons, by upgrading the petitioner's post ie., Grade II Physical Director to Grade I Physical Director (Higher Secondary) from the date of appoint ie., 15.12.1980 with all service benefits within the time stipulated by this Court.

Prayer in WP(MD)No. 553/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for entire records relating to the Impugned Proceedings of the 2nd respondent in his Proceedings in Moo.Mu.No.14601/W5/E1/2009, dated12.2013 and quash the same as illegal and consequently to direct the 2nd respondent herein to regularize the services of the petitioner as Grade I Physical Director (Higher Secondary) on par similarly placed persons , by upgrading the petitioner s post i.e. Grade II Physical Director to grade I Physical Director (Higher Secondary) from the date of acquisition of post Graduation i.e M.P. Ed viz., June 2001 with all service benefits within the time stipulated by this Honourable Court.



Prayer in WP(MD)No. 554/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for entire records relating to the Impugned Proceedings of the 2nd respondent in his Proceedings in Moo.Mu.No.14601/W5/E1/2009, dated12.2013 and quash the same as illegal and consequetnly to direct the 2nd respondent herein to regularize the services of the petitioner as Grade I Physical Director (Higher Secondary) on par similarly placed persons, by upgrading the petitioner s post i.e. Grade II Physical Director to grade I Physical Director (Higher Secondary) from the date of appointment i.e. 01.07.1987 with all service benefits within the time stipulated by this Honourable Court.

Prayer in WP(MD)No. 555/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for entire records relating to the Impugned Proceedings of the 2nd respondent in his Proceedings in Moo.Mu.No.14601/W5/E1/2009, dated12.2013 and quash the same as illegal and consequetnly to direct the 2nd respondent herein to regularize the services of the petitioner as Grade I Physical Director (Higher Secondary) on par wimilarly placed eprsons, by upgrading the petitioner s post i.e. Grade II Physical Director to grade I Physical Director (Higher Secondary) from the date of appointment i.e. 06.09.2002 with all service benefits within the time stipulated by this Honourable Court.

Prayer in WP(MD)No. 556/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for entire records relating to the Impugned Proceedings of the 2nd respondent in his Proceedings in Moo.Mu.No.14601/W5/E1/2009, dated12.2013 and quash the same as illegal and consequently to direct the 2nd respondent herein to regularize the services of the petitioner as Grade I Physical Director (Higher Secondary) on par similarly placed persons , by upgrading the petitioner s post i.e. Grade II Physical Director to grade I Physical Director (Higher Secondary) from the date of appointment i.e 01.07.1997 with all service benefits within the time stipulated by this Honourable Court.

Prayer in WP(MD)No. 557/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for entire records relating to the Impugned Proceedings of the 2nd respondent in his Proceedings in Moo.Mu.No.14601/W5/E1/2009, dated12.2013 and quash the



same as illegal and consequently to direct the 2nd respondent herein to regularize the services of the petitioner as Grade I Physical Director (Higher Secondary) on par with similarly placed persons, by upgrading the petitioner's post i.e. Grade II Physical Director to grade I Physical Director (Higher Secondary) from the date of appointment i.e. 27.07.1992 with all service benefits within the time stipulated by this Honourable Court.

(In all WP's)

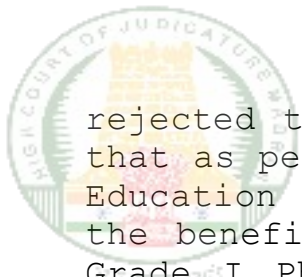
For Petitioner : Mr.AL.Kannan
For Respondents : Mr.J.Gunaseelan Muthiah,
Addl. Government Pleader for R1 to R5
No appearance for R6

O R D E R

The order impugned dated 04.12.2013 issued by the second respondent is sought to be quashed in the present writ petition. Further direction is sought for to direct the 2nd respondent to regularize the services of the petitioners as Grade I Physical Director at Higher Secondary School on par with similarly placed persons, by upgrading the petitioners' post from Grade II Physical Director to Grade I Physical Director (Higher Secondary) from the date of his appointment.

2.The learned counsel for the petitioners states that the petitioners were holding the post of Grade II Physical Director. The sixth respondent school was sanctioned with three posts of Physical Education Teacher. When the competent authorities sanctioned three posts of Physical Education Teacher and the petitioners were promoted as Grade II Physical Director from 01.09.1990 in a retirement vacancy, which was approved then, they are entitled for further upgradation to the post of Grade I Physical Director as per the Government Orders are in force. The contention of the petitioners is that as per the Government Orders, three posts of Physical Education Teachers were sanctioned to the sixth respondent schools and therefore one post of Grade II Physical Director is to be promoted as Grade I Physical Director. The petitioners being senior Grade II Physical Director in their school, they are entitled for upgradation to the post of Grade I Physical Director.

3.The writ petitioners earlier filed W.P.(MD)Nos.852 of 2009 and batch and this Court passed an order to consider the cases of the writ petitioners in accordance with the circular issued by the Director of School Education and make necessary recommendations as expeditiously as possible. The respondent



rejected the claims of the writ petitioners mainly on the ground that as per the Government Order issued in G.O.Ms.(4D)No.1 (School Education Department), dated 21.01.2000, 52 schools were granted the benefit of upgradation of Grade II Physical Director post as Grade I Physical Director post and those 52 schools were given with the benefit based on the seniority of the teachers working. Accordingly, the retrospective upgradation of Grade II Physical Director post as Grade I Physical Director post cannot be granted at all. Challenging the impugned order, the learned counsel appearing for the writ petitioners contended that the upgraded post is to be considered and as per the aided schools are considered, State wide seniority for upgradation cannot be followed at all. Thus, the impugned order is perverse and liable to be scraped.

4.The learned counsel for the petitioner referred G.O.Ms.525, School Education (D1) Department, dated 29.12.1997 issued by the Government regarding the revision of norms for assessment of grant for teaching posts. As per the Government Order "when the strength in classes VI to X in the High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3". Therefore, the petitioner school is entitled for three posts of Physical Education Teacher. If three posts of Physical Education Teacher is sanctioned, then, the upgradation is to be given from Physical Director Grade-II to Grade-I as per G.O.Ms.No.73 and accordingly, the petitioner school is eligible to get upgradation as per the relief sought for in the present writ petition.

5.The learned counsel for the petitioner referred the Judgment of the Hon'ble Division Bench of this Court in the case of **Director of School Education, Chennai Vs. K.Uma** reported in **2010 (2) MLJ 277** and the relevant paragraph Nos.23 and 24 are extracted hereunder:-

"..23.As stated above, the normal understanding of the above government order with regard to Physical Education Teachers is that the High Schools would have maximum number of three Physical Education Teachers and Higher Secondary School would be added one more Physical Education Director in the name of Physical Education Director. However, there cannot be any ceiling with regard to the strength of teachers as the same is bound to vary/increase as per the strength of the student's. When the student strength is increased, the ceiling has to be removed and required more Physical Education Teachers are to be appointed, otherwise the students



would suffer irreparably and the government order would go against the very scheme of education.

24.Hence G.O.Ms.No.525 needs to be given a liberal interpretation and the government is at liberty to reconsider the matter and issue reasonable viable and appropriate norms with regard to appointment of physical education teachers in the schools as per the strength of students, considering the observations made by this Court expeditiously..”

6.Relying on the said Judgment, the learned counsel for the petitioner reiterated that the importance of the Physical Education Teacher in the school is emphasized by the Hon'ble Division Bench and therefore, there cannot be any restriction for sanctioning of Physical Education Teacher in a school where adequate post is available. The principles of restriction of the post of Physical Education Teacher is not appreciated by the Hon'ble Division Bench of this Court and therefore, the writ petition is to be allowed.

7.The learned Additional Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the petitioner school is not entitled for the relief as such sought for in the present writ petition. The petitioner school is sanctioned with two posts of Physical Education Teacher alone. Out of the two sanctioned posts, one post is already upgraded as Physical Director Grade-II and the said Mr.Kulanthai is working now in the said post. As per the Government Order issued in G.O.Ms.No.73, dated 19.03.2010, only in case of availability of three sanctioned posts of Physical Education Teacher, then, alone one post of Physical Director Grade-I can be sanctioned and not otherwise. When the petitioner school is having only two sanctioned posts of Physical Education Teacher, they are not eligible to seek upgradation as per the Government Order issued in G.O.Ms.No.73.

8.Considering the arguments, this Court is of the considered opinion that sanctioning of the post is the Government policy, which is issued in G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997. Thus, fixation of staff strength in Elementary/High/Higher Secondary Schools for the purpose of State Aid is to be considered based on the said Government Order. The said Government Order as stated in the aforementioned paragraph stipulates that “when the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to a maximum of 3”. The Government Order unambiguously states that one post of Physical Education Teacher will be



sanctioned in the students strength exceeds 250, and for every additional strength of 300, another post of Physical Education Teacher will be sanctioned. However, the maximum post of three alone is the ceiling limit. Thus, any other school is not entitled to have more than three physical Education Teachers.

WEB COPY

9. With reference to G.O.Ms.No.73, dated 19.03.2010, which was issued regarding upgradation to the post of Physical Education Teacher as Physical Director Grade-II and Physical Director Grade-I. The said Government Order is passed enabling the Director to consider the students strength and accordingly, issue order in accordance with the Government policy issued in G.O.Ms.No.525. Paragraph No.2 of the Government Order clearly states that in a Government Aided Higher Secondary School, if three posts of Physical Education Teacher is sanctioned as per the students strength and as per G.O.Ms.No.525, actions may be taken by the Director for upgradation to the post of Physical Director. The Government Order does not speak about the manner in which, such upgradation is to be given. However, it is made clear that only in the event of sanctioning three posts of Physical Education Teacher, upgradation shall be given to the post of Physical Director.

10. The Government Order in G.O.Ms.4(D)No.1 dated 21.01.2000 reveals that the Government sanctioned 94 posts of Grade I Physical Director. In other words, 94 posts of Grade II Physical Director were upgraded as Grade I Physical Director. The upgradation order was passed in G.O.Ms.No.188 dated 05.05.1997 and G.O.Ms.No.185 dated 03.06.1998. Those upgraded Grade II Physical Director as Grade I Physical Director were allotted to 52 aided higher secondary schools. It is important to note that the Government upgraded only 94 posts of Grade II Physical Director as Grade I Physical Director. Thus, the final sanction was accorded only to 94 posts of Grade I Physical Director.

11. It is important to note that the financial implications in approving the sanctioned post is also to be taken into consideration. Once the Government took a policy decision to upgrade 94 posts of Grade II Physical Director as Grade I Physical Director, then there cannot be any further upgradation in excess. In other words, over and above, the sanctioned upgraded posts, the school cannot claim further upgradation in excess than the sanctioned posts. Sanctioning of upgradation is an administrative provocative of the Government and a policy decision. When the Government has decided to upgrade 94 posts of Grade II Physical Director as Grade I Physical Director and those 94 posts are already filled up, then there is no question of further upgradation to any other school as such further upgradation would have financial implications for the State Exchequer.



12. Undoubtedly, upgradations are to be granted with reference to policy of the Government.

13. As per the Government Order issued in G.O.Ms.No.525, the entitlement of the aided schools for Physical Education Teacher is clearly stated. Accordingly, when the strength in classes 6 to 10 in high schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional Physical Education Teacher will be sanctioned subject to maximum of three posts. Thus the entitlement of an aided school is to get three sanctioned posts of Physical Education Teacher. The parent Government Order namely, G.O.Ms.No.525 states that there is no post of Grade II Physical Director or Grade I. Thus, the benefit of upgradation is granted by the Government only for a limited post in order to facility the seniority teachers to get the upgraded posts. G.O.Ms. (4D) No.1 also contemplates that 94 posts of Grade II Physical Director are upgraded as Grade I Physical Director. G.O.Ms.No.73 is also not saying any further upgradations were given for the purpose of Physical Education Teacher.

14. Upgradation is a policy decision. Upgradation of posts can never be claimed as a matter of right either by the teachers or by the school concerned. Upgradation cannot be compared with promotion. For promotion, permanent sanctioned posts are available, upgradation is a concession provided to the teachers and such a concession can never be claimed as a matter of right. Even promotion cannot be claimed as a matter of right. Thus, the promotion or upgradation is subject to the availability of sanctioned posts and not at the choice of the teacher or the aided school concerned. However, the Government Order issued in G.O.Ms.No.525 enumerates that a school is entitled to have three sanctioned post of Physical Education Teacher. Thus, even incase three Physical Education Teachers are working in a school, it is not necessary that the posts must be upgraded as Grade I Physical Director.

15. Upgradation being a concession extended by the Government for limited number of posts, then such upgradation cannot be claimed as a matter of right. However, equality is to be maintained and as rightly said the seniority is also to be maintained. In the present case, the impugned order itself states that as per the seniority, 94 persons were granted upgradation to the post of Grade I Physical Director and further upgradation is not automatic and subject to the sanctioning of the additional posts of Grade I Physical Director. In other words, without sanction of the posts of upgradation to Grade II Physical Director no upgradation will be given. The Director of School Educational



is empowered to pass orders granting upgradation. Thus, the seniority is followed while granting upgradation.

16. In the event of accepting the contentions of the petitioners, there are many number of schools, which all are having three sanctioned posts of Physical Education Teacher. Then, all such schools or teachers will claim upgradation as an automatic affair. In the event of granting such upgradation in large number, the same would have financial implications and thus, the Government has to consider and take a policy decision to increase the upgraded posts of Grade I Physical Director. Courts cannot grant relief over and above the sanctioned upgraded posts of Grade I Physical Director. If the Courts issue directions to grant retrospective upgradation of Grade I Physical Director to such schools, then it may not be possible for the Government to regulate the upgradation of posts and to sanction the posts in accordance with the Government Orders in force.

17. As stated earlier, upgradation is only a concession and upgradation is not a right. Upgradation is to be granted strictly in accordance with policy decision of the Government. Thus, the petitioners cannot seek upgradation merely on the ground that three number of posts of Physical Education Teacher is sanctioned and therefore, they are entitled to be upgraded to the post of Grade I Physical Director. In normal circumstances, a teacher working as Physical Education Teacher cannot claim an automatic upgradation to the post of Grade II Physical Director or Grade I Physical Director and all such upgradations are to be considered strictly in accordance with the Government Policy in force. As per the Government Policy, only 94 posts of Grade II Physical Director is upgraded as Grade I Physical Director and thereafter, only if vacancy arises as per the seniority the next person is to be considered. It is not as if the school having three posts of Physical Education Teacher is entitled for upgradation. Such a concept is not contemplated in either G.O.Ms.No.525 or in the other Government Orders referred by the petitioners.

18. In these circumstances, the petitioners have not established any legal ground for the purpose of granting the reliefs as such sought for in these present writ petitions. However, it is made clear that in the event of availability of sanctioned upgraded posts of Grade I Physical Director, the petitioners are at liberty to approach the competent authority for submission of proposals through proper channel and in such circumstances, the competent educational authority are bound to consider based on the student's strength and based on other factors and take a decision and pass appropriate orders on merits and in accordance with law.



19. With these observations, these writ petitions stand disposed of. No costs.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

ias

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 Principal Secretary to the Government,
School Education Department,
St. George Fort, Chennai - 9.

2. The Director of School Education,
College Road, Chennai.

3. The Joint Director of School
Education (Higher Secondary),
College Road, Chennai.

4. The Chief Educational Officer,
Tiruchirappalli District.

5. The District Educational officer,
Tiruchirappalli District.

+1 CC to SGP (SR-24258, 24257, 24259, 25260, 24261 & 24262 [F]
dated 07/12/2020)

W.P[MD]No. 552, 553, 554, 555, 556 and 557 of 2014

04.12.2020

NA (CO)

KM (22.12.2020) 9P 7C