



W.P.(MD).Nos.17030 and 20067 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 27.09.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD).Nos.17030 and 20067 of 2023**  
**and W.M.P(MD) Nos.14245, 16529, 16530 and 15797 of 2023**

In both the petitions:

P.Jeyakodi

... Petitioner

Vs

1. The Director of School Education,  
DPI Campus, College Road,  
Chennai-600006.
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.
5. Vijayalakshmi

... Respondents



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**Prayer in WP(MD) No.17030 of 2023** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 4 to consider the petitioner's representation, dated 30.05.2022 and consequential direction to promote her as Post Graduate Assistant (Mathematics) in the 4th respondent school namely Mallankinaru Nadarkal MSP Senthilkumara Nadar Higher Secondary School, Mallankinaru, Virudhunagar District.

**Prayer in WP(MD) No.20067 of 2023** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of promotion dated 07.07.2023 passed by the 4th respondent and quash the same and consequently directing the respondents 1 to 4 to promote the petitioner as Post Graduate Assistant (Mathematics) in the 4th respondent school namely Mallankinaru Nadarkal MSP Senthilkumara Nadar Higher Secondary School, Mallankinaru, Virudhunagar District.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.N.Ramesh Arumugam (R1 - R3)  
Government Advocate.

Mr.F.Deepak (R4)

Mr.P.Chellapandian (R5)



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### **COMMON ORDER**

Both the writ petitions have been filed seeking to quash the impugned order passed by the fourth respondent, dated 07.07.2023 and consequently direct them to promote the petitioner as Post Graduate Assistant (Mathematics) in the 4<sup>th</sup> respondent school, namely, Mallankinaru Nadarkal MSP Senthilkumara Nadar Higher Secondary School, Mallankinaru, Virudhunagar District.

2.Heard, Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner, Mr. N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 3, Mr. F.Deepak, learned counsel appearing for the fourth respondent and Mr.P.Chellapandian, learned counsel appearing for the fifth respondent. Perused the materials on record.

3.(i).The petitioner and the fifth respondent were working in fourth respondent school. Both came to be appointed vide proceedings of the fourth respondent, dated 31.12.2008. Thereafter, the petitioner joined in the post of B.T. Assistant on 03.02.2009 and the fifth respondent joined on 13.01.2009, ie.,



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before the date of joining of the petitioner. The third respondent approved both the appointments on 03.02.2009 vide proceedings, dated 03.06.2009.

(ii).While so, the petitioner joined M.Sc., Maths Post Graduation Course through Distance Education on 07.10.2009 and she completed her Master Degree in the month of May, 2012. On completion of the same, the petitioner made a representation, dated 06.01.2020 requesting the third respondent for ratification of her master degree for getting prior permission and to grant incentive increment for obtaining higher qualification. Since the same was not considered by the respondents, the petitioner filed W.P(MD) No. 1473 of 2020 before this Court and this Court vide order, dated 29.01.2020 was pleased to direct the third respondent to consider the representation of the petitioner, dated 06.01.2020. However, the same came to be rejected by the third respondent vide letter, dated 02.03.2020, on the basis of G.O.Ms.No. 944, Education (D2) Department, dated 29.07.1989.

(iii).Since the said G.O has already been quashed by this court in W.P(MD) No. 14085 of 2015, dated 26.11.2020, the petitioner filed a petition in W.P(MD) No.19551 of 2020 and the same came to be allowed on 02.03.2020. Challenging the same, an appeal has been preferred by the fourth respondent school in W.A(MD) No.345 of 2021 and the same was dismissed on



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15.07.2021, for the reason that the appeal ought to have been challenged only by the Government and not by the fourth respondent school. However, liberty is given to the Government to challenge the same. Pursuant to the same, the Government preferred an appeal in WA(MD) No.1588 of 2021, wherein, the Division Bench of this Court pleased to pass an order of interim stay on 18.08.2021.

(iv).In the meanwhile, the petitioner made a representation, dated 30.05.2022 before the fourth respondent to consider her case for the promotion to the post of Post Graduate Assistant, which was fell vacant from 01.06.2022. However, the same was not considered. Therefore, the petitioner was constrained to file W.P(MD) No. 17070 of 2023. However, in the meanwhile the fourth respondent School had promoted the fifth respondent to the post of Post Graduate Assistant on 07.07.2023. Pursuant to the promotion of the fifth respondent to the post of Post Graduate Assistant, the petitioner filed W.P(MD) No.20067 of 2023, challenging the promotion order of the fifth respondent passed by the fourth Respondent.

4.The fourth respondent has filed a counter.



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5.The learned counsel for the fourth respondent submitted that the qualification of the writ petitioner itself is under challenge and it is a matter of dispute, which is pending before the Division Bench of this Court in W.A(MD) No.1588 of 2021. When the petitioner's qualification itself is in question, she will not be come within the zone of consideration in the fourth respondent school for promotion to the post of Post Graduate Assistant and the only available candidate for the said post at that point of time is the fifth respondent. That apart, the post graduation qualification acquired by the petitioner had not been entered in her service register, whereas, the fifth respondent's qualification has been duly entered in her service register and in addition to that, the dispute for granting incentive increment is a matter pending before this Court in a writ appeal, whereas, the fifth respondent has already been granted with incentive increment by the Government. The fourth respondent school has also considered the station seniority between the petitioner and the fifth respondent, based on their date of joining. Hence, the fourth respondent school has considered only the candidature of the fifth respondent for promotion and duly promoted her to the post of Post Graduate Assistant. It is not necessary for this Court to interfere with the order of promotion passed by the fourth respondent and pressed for dismissal of the writ petitions.



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6.The third respondent has filed counter.

7.The learned Government Advocate appearing for the third respondent submitted that the third respondent cannot go into the decision of private Schools in the matter of filling up vacancy by promotion. The third respondent has got only a supervisory authority and unless and until the issue has been resolved giving quietus by higher authority, final decision cannot be taken in this matter and further he submitted that though the fifth respondent has been promoted to the post of Post Graduate Assistant, her promotion is not approved and her salary is not yet disbursed.

8.Per Contra, the learned counsel appearing for the petitioner, contended that the petitioner will not come under the zone of consideration for promotion at all, since her degree is at stake, due to the contradictory view taken by the fourth respondent. It appears that the petitioner's degree is in question and the question of incentive increment is also ceased of by the Division Bench of this Court. It is noted that not awarding incentive increment for acquiring higher degree obtained by the petitioner, will not take away the



validity of degree obtained by her. That apart, the School is favourable towards the fifth respondent only because of that, fourth respondent school has wantonly refuted to enter the higher qualification acquired by the petitioner in the service register and at the same time, had duly entered the higher qualification acquired by the fifth respondent. On that basis, the petitioner's candidate being considered for the promotion to the post of Post Graduate Assistant should not be affected the right of the petitioner for being considered for promotion, which is a fundamental right under the Constitution of India. Further relying upon the order passed by Division Bench reported in **2016(7) MLJ 732**, the learned counsel for the petitioner submitted that it is not at all necessary for a Teacher to get prior permission for acquiring higher qualifications, while in service. The relevant portion is as follows:

*“In the instant case, the contention canvassed by Mr.G.Prabhu Rajadurai that the suitability of the candidate depends upon various relevant factors, may not be disputed seriously. But however, in the process of making an assessment of the suitability of the candidates seriously, subjective satisfaction should not be resorted to, but instead, it should be based on an objective assessment of the suitability of the candidates and for that purpose, guiding factors for assessing the suitability of the candidates, have to be drawn first. Then the candidates are required to be judged on that scale. The reasons assigned by*



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*the management of the school for arriving at the conclusion that the writ petitioner/appellant was not suitable for promotion as Headmistress of the school, lacks a serious application of mind on the part of the school management. It was alleged against the writ petitioner/appellant that the factum of her possessing the necessary educational qualifications is doubted. It was also further alleged that the qualifications have been acquired by the writ petitioner / appellant teacher without obtaining prior permission from the management or without obtaining the leave of absence. We are afraid that, these reasons cannot carry much merit or conviction. When we have perused the copy of the service register of the writ petitioner / appellant, we realised that the qualifications possessed by her have already been recorded in the said service register and the said service register was also periodically inspected by the Government departmental agencies who have signed in proof of verification of the contents of the service register. If a teacher produces her educational qualifications once before and an entry is also made to that effect in the service register, the need to produce the copy of the same educational certificates every time ceases to have any serious effect. Once the qualifications are entered in the service register and the said contents of the service register are verified, it presupposes that the writ petitioner / appellant possesses the necessary qualifications to be considered for promotion. The other two reasons as to how the*



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*writ petitioner / appellant secured the qualifications, cannot be made a subject matter of scrutiny for the purpose of making the assessment about her promotion as the Headmistress of the school at this distant point of time. For the aforementioned reasons, we are of the opinion that the decision arrived at by the management with regard to the writ petitioner /appellant lacking the necessary qualifications and suitability for promotion, is not arrived at after making a fair and/or impartial assessment of the same.”*

9. That apart, the learned counsel for the petitioner submitted that the fourth respondent ought to have considered the merit and ability between the available candidates, ie., between the petitioner and the fifth respondent in an unbiased manner without discriminative approach. He relied upon the order of Division Bench reported in **1994 (1) LW 60**, the relevant portion is as follows:.

*“In this regard, it may be pointed out that Sub-rule (4) of Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules (1974) specifically states that promotions shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. Therefore, in order to satisfy or to act in accordance with Sub-rule (4) of Rule 15 of the Rules, the committee must*



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*place on its records or the proceedings of the committee must disclose that the selected candidate is more meritorious and is also superior in his ability than the one who is not selected. If we have to accept the contention of the learned Counsel for the appellant, then, we will be giving an unbridled power to the Selection Committee, which can arbitrarily say, of the two candidates appearing before it, one is more meritorious and another is less meritorious without any basis whatsoever. Such arbitrary exercise of power cannot be permitted or upheld as Article 14 of Constitution strikes at such arbitrary exercise of power. Therefore, it is necessary for the Selection Committee to record the grounds of merit and ability on the basis of which it has made the selection. This interpretation of ours also accords with the very scheme of the Act and the Rules. It may be pointed out here that every decision of the Selection Committee is made appealable to the Appellate Authority. If the Selection Committee is not required to state the grounds on which the selection is made, it is not possible to hold on what basis, the Appellate Authority should consider the validity of the order passed by the Selection Committee, unless it be that Selection Committee gives the grounds for coming to the conclusion that the selected candidate is more meritorious and is superior in his ability than the one who is not selected. We have already reproduced the relevant portion of the Supreme Court's decision relied upon by the learned Counsel for the appellant in National Institute of Mental Health & Neuro Sciences v.*



*Dr. K. Kafyanaraman A.I.R. 1992 S.C. 1800 : 1992 Lab. I.C. 1800 : (1992) 2 S.C.C. 461. That decision proceeds on the basis that if there are no Rules, it is not necessary for the Selection Committee to pass a considered order and when the Rule provides that it must make the selection on the ground of merit and ability, the Selection Committee is required to state what are those grounds on which a candidate is selected in preference to the one who is not selected. It is also relevant to notice that the Supreme Court in the aforesaid case was dealing with the case in which the decision of a Selection Committee Was not made appealable. Therefore, we are of the view that the ultimate decision arrived at by the learned single Judge is just and proper and as such, it does not call for interference. Consequently, it follows that this writ appeal must fail. It is accordingly dismissed.”*

10.It is further submitted by the learned counsel for the petitioner that whenever there are candidates available for promotion, it is the bounden duty of the appointing authority to judge and finalise the candidate on merits and ability. However, such an exercise is not done in this case and prayed to allow the writ petitions.



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11.Considering the rival submissions put forth by all the parties, this Court is of the opinion that the question of granting incentive increment will never validate the higher graduation, which has been acquired by the petitioner and if that is the stand of the Court, obviously the fourth respondent ought to have considered the merits and eligibility among the available two candidates, for promoting a suitable candidate to the post of Post Graduate Assistant. Since the same is not done, this Court hereby inclined to quash the impugned orders and remand the matters back to the fourth respondent to assess the merit and ability between both the candidates, ie., the petitioner and the fifth respondent and pass appropriate orders, within a period of four (4) weeks, from the date of receipt of copy of this order.

12.Accordingly, both the writ petitions stand allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

**27.09.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
PNM



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To  
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**L.VICTORIA GOWRI, J.**

PNM

**COMMON ORDER IN**  
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