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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4881/2013 and CM APPL. 11070/2013**

POONAM SHARMA Petitioner

Through: Mr. D. Verma, Advocate
(M:9811118333)

versus

DIRECTOR OF EDUCATION & ORS. Respondents

Through: Mr. Sujeet Kr. sMishra,
Advocate for R-1/DoE.
Mr. Atul Kumar Sharma,
Advocate for R-2 & 3
(M:9868243224,email:atul.127
3@gmail.com)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

03.02.2023

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MINI PUSHKARNA, J.

1. The present writ petition has been filed with prayer for quashing and setting aside the minutes of meeting of Departmental Promotion Committee ('DPC') dated 17.06.2011 whereby the DPC directed the respondent no. 2 school to communicate his average ACRs to respondent no. 3 and further directed that after getting his explanation, Managing Committee may rectify the shortcomings/deficiencies in his ACRs. There is further prayer for quashing the action of respondent no. 2 in reviewing the ACRs of respondent no. 3 for the period 2005-06, 2006-07 and 2008-09 on the ground that the same was done without any authority and jurisdiction, being in violation of Rule

112(7) of Delhi School Education Rules, 1973 (DSER, 1973). The petitioner has also prayed for setting aside the minutes of the DPC dated 23.12.2011 and its recommendations, whereby the name of respondent no. 3 was recommended for promotion to the post of PGT (History) and all the consequential orders passed in pursuance of the recommendation of the DPC dated 23.12.2011 for appointment of respondent no. 3. The petitioner seeks her promotion to the post of PGT (History) instead with effect from the date when respondent no. 3 was promoted on the said date, with all consequential benefits.

2. Facts of the case are that the post of PGT (History) fell vacant in the respondent no. 2 school and for the purpose of filling up the said post, the Management of respondent no. 2 held a DPC on 17.06.2011. Three persons were in the zone of consideration viz. the petitioner herein, who was TGT (Maths); respondent no. 3 herein, who was TGT (English) and Smt. Shashi Rani, who was TGT (Hindi). During the scrutiny of ACRs of the eligible candidates for the last five years, it was observed by the DPC that ACRs of respondent no. 3 were marked as 'average' for the years 2005-06, 2006-07 and 2008-09, which had not been communicated to him. Thus, the DPC advised the school to convey to the respondent no. 3 regarding his average ACRs for the aforesaid years, seek his explanation, after which the Managing Committee may re-consider the case.

3. The minutes of meeting of the DPC dated 17.06.2011 are reproduced hereinbelow:

***“MARWARI SR. SEC. SCHOOL, AMIR CHAND
MARG, NEW DELHI- 110006.***

Minutes of the meeting of the DPC for the promotion to the post of PGT History

A meeting of the DPC for the promotion to the post of PGT history is held under the Chairmanship of Sh. S.K. Gupta, Chairman of the School Managing Committee in the premises of the school on 17.6.2011 at 1.00 PM. The following members were present:-

- 1. Sh. S.K. Gupta Chairman, Marwari SSS, Amir Chand Marg, D-6*
- 2. Dr. J.D. Bhardwaj DE' Nominee, DEO, Zone 14, Distt. West-A*
- 3. Sh. S.K'. Saraswat EO, Zone 27, Distt. Central*
- 4. Sh. Mohar Singh Subject Expert, Vice-Pr., GBSSS K Block Jahangir Puri.*
- 5. Sh. P.B. Gupta Vice Principal, Marwari SSS, Amir Chand Marg, D-6*

The post of PGT History fell vacant in the school due to the promotion of Sh. P.B. Gupta, as Vice Principal, on 15.11.2010. The Post is covered under the post fixation for the 2009-10. The School Managing Committee unanimously resolved to fill up the post of PGT History and has certified that there is no dispute regarding the seniority among the teachers in the category of TGTs. The management of the school certified that no TGT has been rendered surplus and adjusted elsewhere who could fall in the zone of consideration. It has also been certified that no vigilance enquiry is pending against any teacher in the zone of consideration in the category. The management has also certified that the school does not have common seniority with any other school.

As per seniority list provided by the school authorities there are three candidates namely Sh. Pawan Kumar Sharma (TGT English), Km. Poonam Sharma (TGT Maths) & Smt. Shashi Rani (TGT Hindi) In the zone of

consideration.

The DPC examined the seniority list of eligible candidates in the zone of consideration and their service records, ACR's Results for the last 6 years. Work Conduct Reports and Integrity Report. After the scrutiny of ACR's it was observed that ACR's of Sh. Pawan Kumar Sharma marked as average for years 2005-06, 2006-07, 2008-09 and not conveyed to the concerned official.

In view of above DPC advised to convey the official average ACR's and after getting the explanation, managing committee may reconsider the case. In addition to it some short comings/deficiencies were noticed which should also be rectified and after doing needful DPC should be called again. DPC deferred by the unanimous decision of all members”

4. Pursuant thereto, the three ACRs wherein respondent No.3 had been marked as “average” were communicated to him, where upon he made a representation to the Managing Committee of the school. The ACRs of the respondent No.3 were reviewed by the Managing Committee and he was upgraded from “average” to “good” for the three ACRs in question. Thus, when the subsequent DPC was held on 23.12.2011, it recommended the name of respondent No.3 for the post of PGT (History). The minutes of the meeting of the DPC dated 23.12.2011 are reproduced as below:

“MARWARI SR. SEC. SCHOOL, AMIR CHAND MARG, NEW DELHI- 110006.

Minutes of the meeting of the DPC for the promotion to the post of PGT History

A meeting of the DPC for the promotion to the post of PGT history is held under the Chairmanship of Sh. S.K. Gupta, Chairman of the School Managing Committee in the premises of the school on 23.12.2011 at 2.00 PM. The following members were present:-

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| <i>1. Sh. S.K. Gupta</i> | <i>Chairman, Marwari SSS,
Amir Chand Marg, D-6</i> |
| <i>2. Dr. J.D. Bhardwaj</i> | <i>DE' Nominee, DEO, Zone
14, Distt. West-A</i> |
| <i>3. Sh. S.K. Saraswat</i> | <i>EO, Zone 27, Distt.
Central</i> |
| <i>4. Sh. Mohar Singh</i> | <i>Subject Expert, Vice-Pr.,
GBSSS K Block Jahangir
Puri.</i> |
| <i>5. Sh. P.B. Gupta</i> | <i>Vice Principal, Marwari
SSS, Amir Chand Marg,
D-6</i> |

The post of PGT History fell vacant in the school due to the promotion of Sh. P.B. Gupta, as Vice Principal, on 15.11.2010. The Post is covered under the post fixation for the 2009-10. The School Managing Committee unanimously resolved to fill up the post of-PGT History and has certified that there is no dispute regarding the seniority among the teachers in the category of TGT's. The management of the school certified that no TGT has been rendered surplus and adjusted elsewhere who could fall in the zone of consideration. It has also been certified that no vigilance enquiry is pending against any teacher in the zone of consideration in the category. The management has also certified that the school does not have common seniority with any other school.

As per seniority list provided by the school authorities, there are three candidates namely Sh. Pawan Kumar

Sharma (TGT English), Km. Poonam Sharma (TGT Maths) & Smt. Shashi Rani (TGT Hindi) in the zone of consideration.

The DPC examined the seniority list of eligible candidates In the zone of consideration and their service records, ACR's Results for the last 5 years. Work Conduct Reports and Integrity Report.

After considering all the facts and records, the DPC unanimously recommend the name of Sh. Pawan Kumar Sharma, TGT English, (Employee ID 19937662) senior most eligible candidate in the category promotion to the post of PGT (History)."

5. Upon coming to know the fact of promotion of respondent no. 3 to the post of PGT (History), various representations were made on behalf of the petitioner by her father and thereafter by the petitioner herself. Petitioner received letter dated 27.04.2013 from the Office of the Education Officer- Zone 27, District Central, that the ACRs of respondent no. 3 was reviewed by the Managing Committee on the representation of respondent no. 3 and thereafter respondent no. 3 was promoted.
6. Thereafter, the petitioner made another representation to Special Director of Education raising questions as to why the DPC dated 17.06.2011 had not recommended the name of the petitioner and also as to under what authority the ACRs were reviewed after 5 years, when average ACR is not treated as adverse entry. However, no reply was received by the petitioner to the said representation. Subsequently, the present writ petition came to be filed on behalf of the petitioner.
7. The case on behalf of the petitioner is that she is well qualified

and having degrees of M.A. (Maths), (Eco), (History) and B.Ed. The petitioner was appointed as TGT (Maths) with the respondent school on 03.07.1995. She has excellent service record and her work, conduct and performance have remained unblemished. Her results have remained very good and to the satisfaction of the officials of the respondents.

8. It is submitted that respondent no. 3 was appointed in the school in 1993 as TGT (English). His results remained average and poor. The Management, knowing the incapability and less potential of the respondent no. 3 never gave Class 10 (CBSE Board) for teaching when he was a TGT and he was confined to teaching only classes 6th to 8th.

9. It is contended on behalf of the petitioner that mere “average” grading in the ACR is not an adverse remark. Relying upon Rule 6.1.4 of the Seniority and Promotion Rules by Muthuswamy, it is submitted that “average” entry may not be taken as adverse remark. Further, the petitioner has also relied upon Office Memorandum dated 28.03.2006 issued by Government of India, Ministry of Personnel and Pension, Department of Personnel and Training, New Delhi, wherein it has been recorded that overall grading given in the ACR should not be communicated even when the grading given is below the benchmark prescribed for promotion to the next higher grade. Thus, it is submitted that there was no need for communicating the ACRs with the grading “average” to the petitioner.

10. It is submitted that it is an admitted fact that as per the Delhi School Manual, all posts whether in direct recruitment or promotion,

are selection posts. Hence, all appointments are to be made on the principle of merit and not seniority. Mere fact of respondent No.3 being senior to the petitioner could not have entitled him to promotion. The performance of respondent No.3 has always been substandard. In fact even after promotion as PGT, respondent was not given Class XII for teaching, but was given only Class X, thus, defeating the entire logic of promotion as PGT since Class X can be taught by TGT.

11. It is further contended on behalf of the petitioner that the difference in performances of the petitioner and respondent No.3 are reflected in their respective results for 5 years prior to arising of the vacancy. Respondent No.3 had not even taught classes IX and X despite being TGT and was teaching English and Social Studies to Classes VI and VII. Further, his pass percentages were below 50%, with the lowest being 14% pass percentage for Class VI in Social Studies in the year 2006-2007. In the same period, the petitioner who was teaching Maths to Classes VI to X had high pass percentage with only one entry below 50% for Class VI in the year 2006-2007.

12. It is the case of the petitioner that the entire process of selection appears biased and motivated towards ensuring promotion of respondent No.3 by any means. The direction of the DPC for communication of ACRs to respondent No.3 was wholly unnecessary and unmerited, as the mandate of the DPC could only be to select the best available candidate as per available records, and not to seek change of records of the candidates. Even otherwise, as per the extant instructions as given in OM dated 28.03.2006 issued by DOPT,

Government of India, there was no necessity for communication of the ACR grading even when the grading given was below the benchmark prescribed for promotion to the next higher grade. The DPC therefore, clearly overstepped its mandate and the direction given by DPC was clearly illegal.

13. It is submitted that respondent No.3 was not eligible to be considered for promotion on the date the vacancy arose or even on the date the DPC was constituted, since admittedly the benchmark for promotion was “good” grading, whereas respondent No.3’s grading for 3 of the 5 years under consideration, was “average”. Thus, as per the applicable standards the “average” grading ACRs is regarded as routine and undistinguished and does not entitle a person to promotion. Respondent No.3 ought not to, therefore, have been considered for promotion at all if the “average” gradings were to be considered.

14. It is further submitted that in terms of the statutory scheme as per Rule 112 of the DSE Rules, review of grading by the Managing Committee takes place under Sub Rule 4 prior to communication of any adverse grading to the concerned employee. Thus, in case of any adverse grading, the employee can raise the grievance by way of appeal to the Director of Education in terms of Rule 112 (7) of DSE Rules.

15. In support of his submissions, Id. Counsel appearing for the petitioner has relied upon the judgment in the case of “***Badrinath Vs. Government of Tamil Nadu and Others.***”, (2000) 8 SCC 395.

16. On the other hand, on behalf of respondent No.1, i.e.,

Directorate of Education it has been stated that the DPC in the present case has proceeded in a fair, impartial and reasonable manner by applying the same yardstick and norms to all the candidates and after consideration of entire material.

17. It is submitted that the respondent No.2 School is a recognised government aided school, which receives 95% grant-in-aid from the Government of NCT of Delhi. The DPC conducted on 17.06.2011 had the nominee from the Directorate of Education as well as Education Officer besides other members. It is submitted that all three eligible teachers were considered for promotion. The DPC examined the seniority list of the eligible candidates in the zone of consideration and their service records, ACR results for the last 5 years and other records. It is submitted that after scrutiny of the ACRs, it was observed that the ACRs of respondent No.3, which were marked as “average” for the year 2005-06, 2006-07 and 2008-09 had not been conveyed to the concerned official as per the Rules. The DPC members as such advised that the respondent No.3 should be apprised regarding his ACRs which had been marked as “average” for the aforesaid years.

18. It is further the case on behalf of respondent No.1 that every entry relating to an employee must be communicated to him so that he has an opportunity of making a representation praying for its upgradation and such representation must be decided fairly and within a reasonable period by the concerned authority. Since the “average” entries had not been communicated to respondent No.3, the DPC advised for communication of the said entries to the concerned

employee. Thus, in accordance with the advice of the DPC members, the respondent No.2 school issued a letter to respondent No.3 dated 04.07.2011 apprising him about the “average” ACRs and asking for his explanation. Thereafter, the Managing Committee of respondent No.2 school reviewed the three ACRs subsequent to the representation received from respondent No.3 in this regard. After such review, Managing Committee converted the “average” rating for the aforesaid three years to “good”. Thus, when the DPC was subsequently reconvened and conducted on 23.12.2011, the respondent No.3 herein was granted promotion on the basis of his seniority.

19. On behalf of the respondent Nos. 2 & 3, it is submitted that the present writ petition is not maintainable, as there are specific provisions of appeal in the DSER, 1973.

20. It is further submitted that proper procedure was adopted by the DPC. Petitioner’s right for promotion was also considered by the Committee at the time of DPC and proper opportunity was given by the Committee to the petitioner. It is submitted that after deferring of the first DPC, the respondent No.2 issued a letter to respondent No.3 on 04.07.2011, as per advice of the DPC members and clarification was sought. Thereafter, respondent No.3 submitted his reply, pursuant to which the Managing Committee of the respondent No.2 school reviewed all the three ACRs of respondent No.3. It is further the case on behalf of respondent Nos. 2 and 3 that DPC was conducted as per Rule 96 (3) (B) of the DSER, 1973. The DPC decided to promote the respondent No.3, being the senior most teacher on the basis of service record. It is submitted that the remarks which have adverse impact on

the promotion of the employee amounts to adverse entry and the same are to be communicated. Since the information regarding adverse entry in the confidential report was not communicated to the respondent No.3, hence DPC members advised to convey the official regarding average ACR as per Rule 112 of the DSER. Further, since in the present case the Management Committee had already removed the adverse remarks, therefore, there was no need to file any appeal by the respondent No.3.

21. The respondents have relied upon the following judgments in support of their submissions:

- (i) ***Devdutt Vs. Union of India and Others*, (2008) 8 SCC 725**
- (ii) ***Union of India and Others Vs. G.R. Meghwal*, passed in Civil Appeal No. 2021/2022, 2022 SCC OnLine SC 1291.**
- (iii) ***Baljeet Singh Vs. Union of India*, 2007 (98) DRJ 356 (DB)**
- (iv) ***Union of India Vs. A.K. Narula*, (2007) 11 SCC 10**
- (v) ***Indian Council of Agricultural Research and Anr. Vs. Dr. J.P. Sharma*, W.P.(C) 2535/2011, judgment dated 17.8.2012**
- (vi) ***Sukhdev Singh Vs. Union of India and Ors.*, (2013) 9 SCC 566**

22. I have heard ld. Counsels for the parties and have also perused the record.

23. At the outset, the objection raised by the respondents as regards the maintainability of the present writ petition is not acceptable. The respondents have contended that the present writ petition is not

maintainable in view of provision for appeal available under the Delhi School Education Act, 1973 (DSEA, 1973). Perusal of provisions of the DSEA, 1973 show that an appeal lies to the School Tribunal in cases where an employee of a recognized private school is dismissed, removed or reduced in rank. However, the present case is neither of dismissal, or removal or reduction in rank. Therefore, writ petition would be maintainable in the present case. This court in the case of ***Sri Yenni Srinivasa Rao Vs. Andhra Education Society (Regd.) & Anr., 2011 SCC OnLine Del 2650***, held as under:

“12. I will first take up the aspect of maintainability of the writ petitions owing to the availability of the alternative remedy of appeal before the Delhi School Tribunal. Section 8(3) of the Delhi School Education Act, 1973 provides for the remedy of appeal to any employee of a recognized private school who is dismissed, removed or reduced in rank. Though the Division Bench of this Court in Kathuria Public School v. Director of Education, 123 (2005) DLT 89 (DB) : 2005 (83) DRJ 541 [DB] had held that the said remedy of appeal is available against all grievances of the employees but the Full Bench of this Court in O.REF. 1/2010 titled Presiding Officer Delhi School Tribunal v. Govt. of NCT of Delhi decided on 27th August, 2010 has held that the remedy of appeal to the Tribunal under Section 8(3) (supra) is available only to employees who are dismissed, removed or reduced in rank.”

24. For the purposes of the present case, it would be useful to refer to Rule 112 of the DSER, 1973 pertaining to confidential reports, which is reproduced as below:

“112. Confidential reports.—(1) Confidential reports in relation to the heads of schools and other employees of recognised schools, whether aided or not, shall be

maintained in form specified by the Administrator in this behalf.

(2) The form referred to in sub-rule (1) shall consist of two parts, of which the first part shall contain factual assessments with regard to the work done by the employee concerned and the second part shall contain the opinion with regard to the performance of the employee concerned.

(3) The signature of the concerned employee shall be obtained on the first part of the confidential report before any opinion with regard to his performance is recorded in the second part of the report:

Provided that if the head of the school or other employee refuses to affix his signature to the factual assessment of his work, the authority recording the confidential report shall make a record of such refusal and complete the confidential report.

(4) The confidential report shall be-recorded, every year, by the head of the school in respect of the employees working under him, and every such confidential report shall be reviewed by the managing committee.

(5) The confidential report in respect of the head of the school shall be recorded, every year, by the Chairman of the managing committee and every such confidential report shall be reviewed by the managing committee.

(6) Any adverse entry in the confidential report, in relation to any head of the school or other employee shall be communicated to him by the Chairman of the managing committee and every such communication shall be made in accordance with the instructions issued by the Central Government in respect of the employees of that Government.

(7) Any employee of an aided school who is aggrieved by any adverse entry in his confidential report may, within thirty days from the date on which such adverse entry is

communicated to him, prefer an appeal against such entry to the Director, and the Director may, after giving to the managing committee a reasonable opportunity of showing cause, make such alterations in the entries in the confidential report as he may think fit and may, for that purpose require the managing committee to produce the concerned confidential report.

(8) The confidential report in relation to the head of the school shall be kept in the safe custody of the Chairman of the managing committee and the confidential reports in relation to the other employees of the school shall be kept in the safe custody of the head of the school.”

25. Rule 112, DSER, 1973 clearly specifies that confidential reports are to be recorded every year by the head of the school. The confidential report is required to be reviewed by the Managing Committee in terms of Rule 112 (4). In case there is any adverse entry in the confidential report, the same shall be communicated to such employee by the Chairman of the Managing Committee. Any employee of an aided school who is aggrieved by any adverse entry in his confidential report, may within 30 days from the date on which such adverse entry is communicated to him, prefer an appeal against such entry to the Director of Education. Thereafter, the Director of Education may, after giving to the Managing Committee a reasonable opportunity of showing cause, make such alterations in the entries in the confidential report, as he may deem fit.

26. Thus, it is clear that the review of the confidential report of an employee has to be done by the Managing Committee in terms of Rule 112. This Court in the case of ***Akhtar Ali Siddiqui and others Vs. Delhi Administration and Others, 1990 SCC OnLine Del 118***

has categorically held that the review by the Managing Committee is mandatory and has to take place whenever the confidential reports are recorded. Thus, it has been held as follows:

“3. Furthermore, our attention has been drawn to the fact that Rule 112(4) provides that in respect of the confidential reports of the teachers which are required to be recorded by the head of the school, the same shall be reviewed by the managing committee. We are informed that the practice which has developed in this school is that the managing committee does not review the ACRs except when there are adverse entries. This, in our opinion, is not the correct procedure. The review by the managing committee is mandatory and has to take place whenever the confidential reports are recorded.”

27. Further, it is also clear that such review by the Managing Committee has to be done at the time when confidential reports are recorded, before the same are communicated to the employee concerned.

28. In the present case, the respondent No.2 School committed an impropriety in not communicating the ACRs of the relevant years to respondent No.3 wherein he had been graded as “average”. Further, the procedure that was followed to review the ACR of respondent No.3 was not proper and was in total violation of the procedure as prescribed under Rule 112 of DSER, 1973.

29. Since the respondent No.3 had been graded as “average” in the ACRs for three years out of the five years under consideration, and admittedly the benchmark for promotion was “good” grading, clearly respondent No.3 was not eligible to be considered for promotion on the date when the vacancy arose or on the date when the DPC was

constituted. Therefore, the petitioner who had been graded as “good” in the ACRs for the said five years under consideration, was eligible to be promoted as PGT on the said date.

30. At the same time, the right of respondent No.3 to be communicated the ACRs where he had been graded as “average”, cannot be overlooked. The respondent No.3 was not only entitled to be communicated such ACRs, but was also entitled to file an appeal with the Director of Education, with respect thereto, since the school in question is an aided school, receiving aid to the extent of 95% from the Government of NCT of Delhi.

31. Supreme Court in the case of ***Dev Dutt Vs. Union of India and Others***, (2008) 8 SCC 725 has categorically held that every entry in the ACR must be communicated to an employee within a reasonable period, whether it is a poor, fair, average, good or very good entry, so that such employee has an opportunity of making a representation against the entry if he feels that it is unjustified and pray for its upgradation. Thus, it has been held as follows:

“17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been

held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

... ..

36. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation

will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

32. Thus, the respondent No.2 school clearly committed an illegality in not communicating the ACRs to the respondent No.3, when his grading was “average”, considering the fact that for promotion, grading of “good” was required. The respondent No.3 cannot be allowed to suffer on account of the illegality having been committed by the respondent No.2 school. Therefore, it cannot be held by this Court that the DPC held on 17.06.2011 and 23.12.2011 ought to have considered the case of respondent No.3 on the basis of the original entries in the ACRs for the three years when he had been graded “average”.

33. Supreme Court in the case of ***Union of India and Others Vs. G.R. Meghwal***¹, upheld the directions of the Tribunal and High Court to review the case of the employee therein by ignoring the below benchmark of one year in the said case, since no opportunity was given to him to improve himself. Thus, it was held as follows:

“30. Therefore, in view of the above and in the facts and circumstances of the case and considering the fact that though the respondent was graded as “Very Good” in the ACRs for the years 2005-2006 and 2006-2007 and was graded only “Good” in the ACR for the year 2007-2008 by the very same reporting and reviewing officer, despite the fact that specifically the respondent was given the

¹ 2022 SCC OnLine SC 1291

opportunity against the ACR for the year 2007-2008. However, no valid reasons are given for rejecting the representation, we are of the opinion that in view of the aforesaid facts and circumstances, the learned Tribunal and the High Court have not committed any error in directing the Department to call for a review meeting of the Screening Committee to re-assess the suitability of the respondent for the purpose of grant of SAG and while doing so to exclude the ACR for the year 2007-2008. Therefore, in the facts and circumstances of the case, no interference of this Court is called for.”

34. Considering the facts and circumstances of the present case, it would not be justified to interfere with the promotion as granted to respondent No.3 in the year 2011.

35. Nonetheless, petitioner has been able to make out a case in her favour. This Court has the power and authority under Article 226 of the Constitution of India to issue necessary directions in order to meet the ends of justice. Supreme Court in the case of ***Badrinath Vs. Government of Tamil Nadu and Others***² has held as follows:

“87. Learned Senior Counsel appearing for the respondents, however, contended that it is not the province of this Court to issue a mandamus to promote the appellant to the super-time scale nor to assess his grading. (See: Union of India v. Lt. Genl. Rajendra Singh Kadyan [(2000) 6 SCC 698 : 2000 SCC (L&S) 797 : (2000) 5 Scale 327] .) This Court, it is true, does not normally make any such assessment on its own nor does it ordinarily issue a mandamus to promote an officer to the super-time scale. This is the general principle.

88. We may, however, point out that it is not as if there are no exceptions to this general principle. The occasions

² (2000) 8 SCC 395

where the Court issued a writ of certiorari and quashed an Order and had also issued a mandamus at the same time to the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In Comptroller & Auditor General of India v. K.S. Jagannathan [(1986) 2 SCC 679 : 1986 SCC (L&S) 345] such a power on the part of this Court was accepted by a three-Judge Bench. Madon, J. referred to the observations of Subba Rao, J. (as he then was) in Dwarka Nath v. ITO [AIR 1966 SC 81 : (1965) 3 SCR 536] wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to “reach justice wherever found necessary” and “to mould the reliefs to meet peculiar and complicated requirements of this country”. Justice Madon also referred to Rochester Corpn. v. R. [1858 EB & E 1024 : 27 LJ QB 434] , R. v. Revising Barrister for the Borough of Hanley [(1912) 3 KB 518 : 81 LJ KB 1152] , Padfield v. Minister of Agriculture Fisheries and Food [1968 AC 997 : (1968) 1 All ER 694 : (1968) 2 WLR 924 (HL)] and to a passage from Halsbury's Laws of England, 4th Edn. Vol. 1, p. 59. Finally Madon, J. observed: (SCC pp. 692-93, para 20)

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in

any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

(emphasis supplied)

We emphasise the words underlined in the above passage to the effect that the Court may in some rare situations itself pass on order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. The same view was expressed by another three-Judge Bench in B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] even regarding disciplinary cases. Verma, J. (as he then was) observed (at SCC p. 762, para 18) as follows:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

(emphasis supplied)

The underlined words reiterate the powers of this Court in rare and exceptional cases.”

36. In view of the detailed discussion hereinabove, it is held that if there being no other legal impediment, the petitioner is entitled to be promoted to the post of PGT (History), with effect from the date when respondent No.3 was promoted on the said post, with all consequential benefits.

37. However, it is clarified that this Court has not interfered with the promotion that was granted to respondent No.3 by the DPC held on 23.12.2011, in the peculiar facts and circumstances of the present case.

38. The present writ petition is disposed of in the aforesaid terms along with pending applications.

(MINI PUSHKARNA)
JUDGE

FEBRUARY 3, 2023/c/au