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**W.P.(MD) Nos.12639 of 2013, 15699 of 2014 &
176 of 2018**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) Nos.12639 of 2013, 15699 of 2014 & 176 of 2018

and

M.P.(MD) Nos.1 of 2013, 2 & 3 of 2014, 1 of 2015

and

W.M.P.(MD) No.184 of 2018

W.P.(MD) No.12639 of 2013:

A.Aandi

... Petitioner

-VS-

- 1.The Chief Education Officer
Virudhunagar District
Virudhunagar
- 2.The District Educational Officer
Srivilliputhur Educational District
Srivilliputhur
- 3.The Secretary
Nadar Higher Secondary School
Jaminkollankondan
Rajapalayam, Virudhunagar District
- 4.T.Ganapathiappan

... Respondents



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W.P.(MD) Nos.12639 of 2013, 15699 of 2014 & 176 of 2018

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the record related to impugned order passed by the third respondent dated 18.03.2013 and quash the same and consequently direct the respondents to promote the petitioner as P.G Assistant (Tamil) w.e.f. 01.06.2012 with all other consequential benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.T.Amjad Khan
Government Advocate for R1 & R2
Mr.G.Thalaimutharasu for R3
Mr.P.Samuel Gunasingh for R4

W.P.(MD) No.15699 of 2014:

T.Ganapathiyappan

... Petitioner

-vs-

1..The District Educational Officer
Srivilliputhur Educational District
Srivilliputhur, Virudhunagar District

2.Nadar Higher Secondary School
rep.by its Secretary
Jaminkollankondan
Virudhunagar District-626 142

3.A.Vishnudhasan

4.A.Aandi

... Respondents

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W.P.(MD) Nos.12639 of 2013, 15699 of 2014 & 176 of 2018

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records on the file of the first respondent in connection with the impugned order of cancellation of approval in the post of P.G.Assistant in Tamil granted to the petitioner *vide* his impugned Proceedings in Na.Ka.No.209/A1/2014 dated 13.08.2014 (received on 13.09.2014) and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Samuel Gunasingh

For Respondents : Mr.T.Amjad Khan
Government Advocate for R1
No appearance for R2 & R3
Mr.K.K.Kannan for R4

W.P.(MD) No.176 of 2018:

Andi

... Petitioner

-vs-

1.The District Educational Officer
Srivilliputhur Educational District
Srivilliputhur, Virudhunagar District

3.The Secretary
Nadar Higher Secondary School
Zamin Kollankondan, Rajapalayam
Virudhunagar District-626 142

4.T.Ganapathiappan

... Respondents

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**W.P.(MD) Nos.12639 of 2013, 15699 of 2014 &
176 of 2018**

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the entire records connected with the impugned order passed by the first respondent in Na.Ka.No. 2327/A1/2017, dated 20.11.2017, withdrawing the order passed by the first respondent, dated 13.08.2014 by cancelling the approval given to the promotion on 17.01.2014 and quash the same consequently directing the first respondent to consider the claim of the second respondent school dated 14.12.2016 for the approval of promotion given to the petitioner as PG Assistant (Tamil) in the second respondent School, namely, Nadar Higher Secondary School, Zamin Kollankondan, Virudhunagar District-626 142.

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.T.Amjad Khan
Government Advocate for R1
No appearance for R2
Mr.P.Samual Gunasingh for R3

COMMON ORDER

The issue that arises for consideration in these writ petitions is whether the respondent – School, namely, Nadar Higher Secondary School, Jaminkollankondan, Virudhunagar District, had followed the procedure as contemplated under Rule 15(4) of the Tamil Nadu Recognised Private Schools



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(Regulation) Rules, 1974 (in short, “Rules, 1974”), while giving promotion to the petitioner in W.P.(MD) No.15699 of 2014 to the post of P.G.Assistant (Tamil).

2. Rule 15(4) of the Rules, 1974 reads as follows:

“15. Qualifications, conditions of service of Teachers and other persons.-

(1) ...

...

...

(4)(i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.”

3. The petitioner in W.P.(MD) No.12639 of 2013 would submit that without conducting any interview, arbitrarily, the respondent – School has promoted the petitioner in W.P.(MD) No.15699 of 2014 as P.G.Assistant (Tamil) in their School. The petitioner in W.P.(MD) No.12639 of 2013 claims that if merit, ability and seniority were considered, he, who is the seniormost B.T.Assistant in the same School, would have been promoted as P.G.Assistant (Tamil) in the respondent – School in place of the petitioner in W.P.(MD) No.



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15699 of 2014. The petitioner in W.P.(MD) No.12639 of 2013 has stated in his writ petition the reasons as to why he is senior to that of the petitioner in W.P.(MD) No.15699 of 2014 and as to why he ought to have been promoted to the post of P.G.Assistant (Tamil) in place of the petitioner in W.P.(MD) No.15699 of 2014.

4. On the other hand, the petitioner in W.P.(MD) No.15699 of 2014 would submit that only due to the fact that he is holding the Under Graduate Degree as well as the Post Graduate Degree in the same subject, namely, Tamil, by following the provisions of the Rules, 1974 (Annexure-V), he was duly promoted as P.G.Assistant Tamil in the respondent – School ahead of the petitioner in W.P.(MD) No.12639 of 2013, through a valid resolution passed by the respondent – School and approval granted by the official respondents.

5. However, learned counsel for the petitioner in W.P.(MD) No. 12639 of 2013 would submit that the letter said to have been addressed to the petitioner in W.P.(MD) No.12639 of 2013, which is enclosed in the typed set of papers filed by the petitioner in W.P.(MD) No.15699 of 2014, was not received



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by the petitioner in W.P.(MD) No.12639 of 2013 and according to the petitioner in W.P.(MD) No.12639 of 2013, the vacancy arose for the post of P.G.Assistant (Tamil) on 31.05.2012, but on the next day i.e., on 01.06.2012, the School Management had appointed the petitioner in W.P.(MD) No.15699 of 2014 as P.G.Assistant (Tamil) arbitrarily without conducting any interview and without giving any opportunity for the petitioner in W.P.(MD) No.12639 of 2013 to participate in any interview and prove himself that he has the merit and ability as well as seniority to be promoted to the post of P.G.Assistant (Tamil).

6. Learned counsel for the petitioner in W.P.(MD) No.12639 of 2013 drew that attention of this Court to Rule 15(4)(i) of Rules, 1974 and would submit that it is clear from the said rule that promotion shall be made only on the grounds of merit, ability and seniority. Since the merit and ability of the candidates was not decided by the respondent – School, the promotion given to the petitioner in W.P.(MD) No.15699 of 2014 to the post of P.G.Assistant (Tamil) is arbitrary and illegal.

7. However, on the other hand, learned counsel for the petitioner in W.P.(MD) No.15699 of 2014 would submit that since the petitioner in W.P.



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(MD) No.15699 of 2014 was possessing the Under Graduate Degree in Tamil and was also possessing the Post Graduate Degree in Tamil, preference should be given to him as per Annexure-V of the Rules, 1974 over the petitioner in W.P.(MD) No.12639 of 2013, who was possessing the Under Graduate Degree in a different subject and was possessing the Post Graduate Degree in Tamil.

8. Annexure-V(IV)(3) of the Rules, 1974 is reproduced hereunder:

<i>3. Post-Graduate Assistants.</i>	<i>(i) A Master's degree in Tamil or in Languages (Tamil) or its equivalent; and (ii) B.T. or B.Ed. degree or its equivalent: Provided that for appointment to the post by recruitment by transfer from the post of Tamil Pandit in the High School, the Pandit Training or Secondary Grade Training shall be considered as equivalent qualification to the B.T. or B.Ed. Degree: Provided further that, other things being equal, preference shall be given to those who have studied Tamil as a Main Subject both in degree and Master's degree levels.</i>
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9. Learned counsel for the petitioner in W.P.(MD) No.15699 of 2014 relies upon the second proviso and would submit that it is clear that when all other things are equal, preference shall be given to those who have studied Tamil as the main subject both in degree and master degree levels.

10. However, learned counsel for the petitioner in W.P.(MD) No. 12639 of 2013 would submit that first merit and ability of the candidate will have to be decided by the School, which has not been done in the case on hand and therefore, the question of promoting the petitioner in W.P.(MD) No. 15699 of 2014 as P.G.Assistant (Tamil), if done by the respondent – School, is arbitrary and illegal, as it would amount to violation of Rule 15(4) of the Rules, 1974.

11. The following facts are undisputed:

- (a) As on date, due to the pendency of the present writ petitions, even though promotion was granted to the petitioner in W.P.(MD) No.15699 of 2014 as P.G.Assistant (Tamil) pursuant to the resolution passed by the respondent – School and approval granted by the official



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respondents, the said promotion has not been given effect to due to the subsequent development, namely, cancellation of the approval for the promotion granted to the petitioner in W.P.(MD) No.15699 of 2014 in view of the interim direction issued by this Court in the present writ petitions.

- (b) The respondent – School is under the direct management of the official respondents due to the dispute in the management of the School.
- (c) The petitioner in W.P.(MD) No.12639 of 2013 has now retired from service from 31.10.2021 by obtaining voluntary retirement from the respondent – School.
- (d) If at all any promotion can be granted to the petitioner in W.P.(MD) No.12639 of 2013, it will be only a notional promotion upto his date of voluntary retirement, namely, till 31.10.2021.
- (e) The petitioner in W.P.(MD) No.15699 of 2014 is also due to retire from service in the year 2028.



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- (f) The contest for the promotion is only for the period from 01.06.2012 to 31.10.2021 when the petitioner in W.P. (MD) No.12639 of 2013 had retired from service by obtaining voluntary retirement.

12. Learned counsel for the petitioner in W.P.(MD) No.12639 of 2013, on instructions, would submit that the petitioner in W.P.(MD) No.12639 of 2013 has no objection, if the petitioner in W.P.(MD) No.15699 of 2014 is promoted with effect from 01.11.2021, after his (petitioner in W.P(MD) No. 12639 of 2013) retirement.

13. This Court, after giving careful consideration to the aforementioned facts and the proceedings of the respondents, is of the considered view that since, as on date, neither the petitioner in W.P.(MD) No. 12639 of 2013 nor the petitioner in W.P.(MD) No.15699 of 2014 have been promoted to the post of P.G.Assistant (Tamil) due to the pendency of these writ petitions and the cancellation of the approval for the promotion granted earlier in favour of the petitioner in W.P.(MD) No.15699 of 2014 has also been



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passed, in the interest of justice, to put a quietus to the issue, the matter has to be remanded back to the District Educational Officer, Sivakasi, to decide as to whether the petitioner in W.P.(MD) No.12639 of 2013 or the petitioner in W.P.(MD) No.15699 of 2014 is eligible to be promoted to the post of P.G.Assistant (Tamil) with effect from 01.06.2012 in the respondent – School and to pass orders on merits and in accordance with law as to who is entitled to be promoted to the post of P.G.Assistant (Tamil) in the respondent School with effect from 01.06.2012.

14. Accordingly, this matter is remanded back to the District Educational Officer, Sivakasi, to decide as to whether the petitioner in W.P. (MD) No.12639 of 2013 or the petitioner in W.P.(MD) No.15699 of 2014 is eligible to be promoted to the post of P.G.Assistant (Tamil) with effect from 01.06.2012 in the respondent – School. The District Educational Officer, Sivakasi, shall give an opportunity of personal hearing to both the petitioner in W.P.(MD) No.12639 of 2013 and the petitioner in W.P.(MD) No.15699 of 2014 and shall pass final orders as to who is entitled to be promoted to the post of P.G.Assistant (Tamil) in the respondent School with effect from 01.06.2012 by following the procedure as contemplated under Rule 15(4) as well as



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Annexure-V(IV)(3) of the Rules, 1974 and any other rules as applicable to the present dispute, within a period of twelve weeks from the date of receipt of a copy of this order. Both the petitioners, namely, petitioner in W.P.(MD) No. 12639 of 2013 and petitioner in W.P.(MD) No.15699 of 2014 are directed to submit their written submissions highlighting their respective contentions and the District Educational Officer, Sivakasi, shall consider those contentions and pass orders on merits and in accordance with law, by adhering to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and its Rules, 1974.

15. It is made clear that the District Educational Officer, Sivakasi, shall decide the promotion issue only with regard to the period from 01.06.2012 to 31.10.2021 being the date of voluntary retirement of the petitioner in W.P.(MD) No.12639 of 2013. It is also made clear that it is deemed that the petitioner in W.P.(MD) No.15699 of 2014 shall be promoted to the post of P.G.Assistant (Tamil) after the retirement of the petitioner in W.P. (MD) No.12639 of 2013 i.e., with effect from 01.11.2021.



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16. With the above directions, these writ petitions are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

03.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Note to Office:

Mark a copy of this order to the
District Educational Officer, Sivakasi

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To:

- 1.The Chief Education Officer,
Virudhunagar District,
Virudhunagar.
- 2.The District Educational Officer,
Srivilliputhur Educational District,
Srivilliputhur. Virudhunagar District.



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ABDUL QUDDHOSE, J.

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and

**M.P.(MD) Nos.1 of 2013, 2 & 3 of 2014,
1 of 2015**

and

W.M.P.(MD) No.184 of 2018

03.10.2024