



W.P.(MD) No.7757 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.7757 of 2021
&
W.M.P.(MD).No.5906 of 2021

Kothainayagi.K.G.

... Petitioner

Vs.

1. The Director of Elementary Education,
Department of School Education, Chennai
- 2 The Chief Educational Officer,
Department of School Education, Chennai
- 3 The District Educational Officer,
Opp. to Rathna Theater,
Tirunelveli- 627 002
- 4 The Assistant Elementary Educational
Officer, Office at Perumal Sannathi Street,
Palayamkottai, Tirunelveli District
- 5 The Ganesamoorthy Middle School,
Representing through its
Special Officer /District Educational Officer,
Kurichi, Palayamkottai, Tirunelveli.

... Respondents



W.P.(MD) No.7757 of 2021

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records of the impugned order passed by the 3rd respondent herein in his proceedings in Na.Ka.No.3239/A2/2020 dated 30.03.2021 and quash the same as illegal and further direct the Respondents 2 and 3 herein to promote the petitioners to the post of Headmistress of Ganesamoorthy Middle School at Kurichi Palayamkottai Tirunelveli District as per Rule 15 (4) of Tamil Nadu Recognized Private Schools (Regulation) Act 1973 forthwith and pass such other further orders that may be deemed to be fit and proper in the facts and the circumstances of the case.

For Petitioner : Mr.S.Kumar

For Respondents : Mr.V.Omprakash, Govt.Advocate
for R1 to 4

R5- No Appearance

ORDER

The short grievance of the petitioner in this writ petition is that non consideration of her case for promotion to the post of Middle School Headmistress on the ground that the B.Lit qualification acquired by the petitioner while she was in service was without obtaining the approval from the head of the department.



W.P.(MD) No.7757 of 2021

2. The issue as to whether the employees who acquired additional qualifications after they enter into service without obtaining the permission from the head of the department are entitled to avail the benefit of such additional qualifications for their further service prospects has come up for consideration in connection with granting of incentive increments for acquiring such additional qualifications before this Court on number of occasions and this Court consistently held that, the obtaining of prior approval is only an irregularity but not an illegality and as such it would not disentitle the employees who acquired such qualifications from availing the benefit of such qualifications.

3. Recently, a learned division bench of this court in W.A.(MD).No. 1124 of 2023 also upheld one such plea while negating the stand of the School Education Department. The learned Division Bench has held as under:

“ 3.This Court find that the issue is no-more resintegra in view of the several judgments on this issue holding that the claim of teachers for incentive increment cannot be rejected on the ground that the concerned teacher had not obtained prior permission of



the authorities for undergoing higher education. Since the issue has been settled by precedents, this Court is unable to countenance the arguments advanced by the learned counsel for the appellants. It is true that there are several Government Order which have insisted the requirement of permission of the educational authorities for a teacher to undergo higher education. It is to be noted that the payment of incentive increment for acquiring higher qualification is to encourage the teachers to acquire higher qualification so that the quality of education will be higher. It may be true that the teacher while in service will have to obtain prior permission as per the Government Orders. Further it is to be noted that acquiring higher qualification while in service is not prohibited and it is only regulated. In such circumstances, acquiring higher qualification while in service without the permission is only an irregularity and that will not entitle the respondents to reject the benefit to the teachers.

4.Considering the overall policy of the Government,there is no reason to take a different view as expressed by the learned Single Judge.The decision relied upon by the learned Single Judge in the subject-matter in issue has been subsequently affirmed by the learned Division Bench of this Court. Hence this Court



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W.P.(MD) No.7757 of 2021

finds no merit in the Writ Appeal and the same is liable to be dismissed.”

4. Further a learned Single Bench of this court also in W.P. (MD)No. 30549 of 2023 by order dated 21.12.2023, referring to the above Division Bench judgement, allowed the Writ Petition wherein the promotion of the petitioner therein was refused to be approved on the ground that the Post graduate qualification acquired by the petitioner therein was without obtaining prior permission from the head of the department.

5. The case of the petitioner herein is also identical and her case is also refused to be considered for promotion to the post of Middle School Headmistress only on the ground that the qualification of B.lit acquired by her was without obtaining prior permission from the head of the department. In the light of the settled legal position, the ground on which the impugned order passed by the 3rd respondent is unsustainable and the same is accordingly set aside and the Writ Petition is allowed, further directing the 5th respondent to consider the case of the petitioner for promotion to the post of Middle School Headmistress and submit the necessary proposals to the 3rd



W.P.(MD) No.7757 of 2021

respondent and in such an event, the 3rd respondent shall consider the same without reference to the fact that the petitioner obtained B.Lit qualification without obtaining prior permission from the head of the department and pass appropriate orders in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

NCC : Yes/No

Index : Yes/No

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W.P.(MD) No.7757 of 2021

MUMMINENI SUDHEER KUMAR, J.

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