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W.P.No.4549



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 02.04.2025

ORDER PRONOUNCED ON : 28.04.2025

CORAM

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.4549 of 2022

and

WMP.Nos.4690, 4692 and 4694 of 2022

T.Narasimhulu

... Petitioner

/Vs./

1.The Commissioner of School Education,
D.P.I.Complex,
College Road,
Chennai 600 006.

2.The Joint Director of School Education (Personnel)
D.P.I.Complex,
College Road,
Chennai 600 006.

3.The Chief Education Officer,
Presidency Girls Higher Secondary School,
Spur Tank Road,
Egmore, Chennai 600 008.

4.The District Education Officer,
Chennai West,
Chennai 600 006.

5.The Honorary Correspondent,
S.K.P.D. Boys Higher Secondary School,
No.107, Govindappa Naicken Street,
Chennai 600 001.



6.The Headmistress,
S.K.P.D. Boys Higher Secondary School,
No.107, Govindappa Naicken Street,
Chennai 600 001.

7.Smt. O.Leelarani,
The Headmistress,
S.K.P.D. Boys Higher Secondary School,
No.107, Govindappa Naicken Street,
Chennai 600 001. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records in pursuant to the 1st impugned order of promotion of 7th respondent as P.G. Assistant in History at S.K.P.D. Boys Higher Secondary School, Chennai 600 001, issued by the 5th respondent in proceedings no 'nil' dated 06.03.2020 and the 2nd impugned order of approval of promotion of the 7th respondent as P.G. Assistant in History at S.K.P.D. Boys Higher Secondary School, Chennai 600 001 issued by the 3rd respondent in proceedings Mu.Mu.No. 7001/E4/2020 dated 07.09.2021 and the 3rd impugned order of promotion of 7th respondent as Headmistress of S.K.P.D. Boys Higher Secondary School, Chennai 600 001 issued by the 5th respondent in proceedings no 'nil' dated 15.12.2021 and quash these orders and consequently direct the respondents to promote the petitioner as Headmaster of S.K.P.D. Boys Higher Secondary School, Chennai 600 001 with effect from 15.12.2021 i.e. with effect from the date of promotion of 7th respondent as Headmistress with all consequential service and monetary benefits.

For Petitioner : Mr.R.Venkatavarathan
for Mr.M.Aswinkumar

For Respondents : Mr.L.S.M.Hasan Fazil,
Additional Government Pleader
for RR 1 to 4
Mr.B.Balachander,



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for Mr.Ashok menon for R5
No appearance for R6
Mr.G.Sankaran,
Senior Advocate
for Mr.R.Jayamalan for R7

ORDER

The writ petition is filed for a writ of certiorarified mandamus to quash the impugned order of promotion dated 06.03.2020, promoting the 7th respondent as P.G. Assistant in History, the impugned order dated 07.09.2021 of the 2nd respondent, granting approval to the said promotion and the order dated 15.12.2021, of the 5th respondent, promoting the 7th respondent as Headmistress of the 5th respondent school to quash the same and consequently promote the petitioner as Headmaster with effect from 15.12.2021, the date 7th respondent was promoted as Headmistress with all consequential and monetary benefits.

2. The 5th respondent school is run by Sri Kanyaka Parameswari Devasthanam and Charities Trust and it is a Telugu Lingustic Minority Government Aided educational institution. The 5th respondent School will be referred to as the School hereinafter. The petitioner a P.G. Assistant, was appointed on 03.06.2019 as Headmaster in charge, pursuant to the superannuation of the incumbent Headmaster. While the petitioner was holding the said post, he made several representations to the School authorities to appoint him as regular Headmaster. As the School did not



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responded favourably, the petitioner requested the School to relieve him and the School also acceded to his request. Later the School invited applications from eligible teachers for regular appointment to the Headmaster's post. The petitioner applied on 30.12.2020, and in pursuance of his application, the petitioner was also called for an interview scheduled on 01.02.2021. The petitioner attended the interview on the said date along with all his testimonials. The petitioner states that the School Management vide the impugned order dated 15.12.2021, appointed the 7th respondent who was only a B.T. Assistant, at the relevant time, as Headmistress, ignoring the petitioner's eligibility and seniority. According to the petitioner, the School Management on retirement of one K.Srinivasulu, who was working as P.G. Assistant, History, transferred and posted the 7th respondent as P.G. Assistant, History, in the place of the said K.Srinivasulu. The petitioner further states that the 7th respondent was ineligible to be promoted as P.G. Assistant, as she held cross major degree (i.e) B.Sc Mathematics, B.Ed and MA, History. According to the petitioner as the 7th respondent was ineligible for promotion as Headmistress the petitioner was constrained to challenge the impugned promotion order dated 15.12.2021, and also the order dated 06.03.2020 of the School, promoting the 7th respondent as P.G. Assistant and the approval order dated 07.09.2021 of the 3rd respondent.

3. The 4th respondent filed a counter for himself and on behalf of the respondents 1, 2 and 3. The 4th respondent after tracing the factual history of the case stated that P.G. Assistant, was a feeder post for promotion to the post of Headmaster,



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of Higher Secondary Schools, as per Government Orders and Rules. The 4th respondent in its counter supported the petitioner stating, *inter alia*, that the 7th respondent was holding cross major degree and hence was ineligible for promotion as Headmistress, that the School failed to note that the 7th respondent did not possess any teaching experience and that while promoting the 7th respondent, the School totally ignored seniority. The respondents further stated that the petitioner was not only eligible, but also possessed the requisite teaching experience as per the Government Orders and Rules and therefore was fit for promotion to the post of Headmaster. The respondents ultimately prayed for the dismissal of the writ petition.

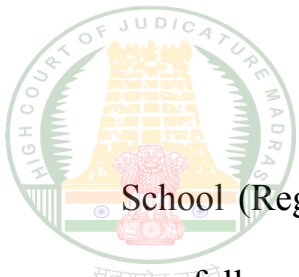
4. The 5th respondent, School filed a detailed counter supporting the promotion of the 7th respondent as Headmistress of the School. According to the School, the petitioner suppressed the fact that he was involved in some irregularities in the conduct of 12th Standard examination, in some other school and therefore his probation was delayed. The School stated that inspite of the disciplinary action and punishment, the respondent had given the petitioner ample opportunities. It was stated that, the School was a linguistic minority Aided School and therefore entitled to protection under the constitution. The School sought support from Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, to justify its promotion of the 7th respondent, as Headmistress of the School. The School stated that on retirement of one G.V.Vijayakumar, on 31.05.2019, applications were invited



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from aspiring teachers for the post of Headmaster. 7 eligible candidates applied for the post, out of whom 2 expressed their unwillingness for promotion. The School conducted the interview on 01.02.2021, in which 5-P.G. Assistants participated including the petitioner and the 7th respondent. That 7th respondent was selected in the interview and the resolution to that effect was passed on 01.02.2021, but considering the fact that formal order of approval of promotion as P.G. Assistant of the 7th respondent was not received from the Department, the posting of 7th respondent as Headmaster was kept in abeyance. Consequent to the approval of the 7th respondents promotion as P.G. Assistant, with effect from 06.03.2020, by the Department on 07.09.2021, the Management Committee passed fresh resolution on 14.12.2021, reiterating the earlier resolution and promoted the 7th respondent, as Headmistress with effect from 15.12.2021. The 7th respondent also joined the post on 15.12.2021. The School further stated that the proposal for approval of promotion of the 7th respondent to the post of Headmistress which was sent to the 3rd respondent for forwarding the same to the 2nd respondent was returned by the 3rd respondent on 29.01.2022 (unsigned) on untenable grounds. The School stated that the aforesaid order dated 29.01.2022, of the 3rd respondent was challenged by the 7th respondent, in W.P.No.17841 of 2022 and the same was pending. The School stated that the writ petition was not maintainable in as much as it was premised on the Special Rules, for Tamil Nadu Higher Secondary Education Service, which were not at all applicable to aided schools governed by the provisions of the Tamil Nadu Recognized Private



School (Regulation) Rules, 1973. The School further stated that the 7th respondent was fully qualified and therefore based on her merit she was selected to the post of Headmaster. The School hence prayed for the dismissal of the writ petition.

5. The 7th respondent filed detail counter replicating the factual submissions made by the School. The 7th respondent stated that she was promoted as P.G. Assistant with effect from 06.03.2020, and was possessed of teaching experience as she took classes for Higher Secondary Students. The 7th respondent stated that she was having the requisite qualification and experience for the post of Headmistress and therefore there was absolutely no infirmity or illegality in her selection. The 7th respondent therefore prayed for dismissal of the writ petition.

6. The petitioner filed a re-joinder affidavit to the School's counter replicating the facts. The petitioner reiterated that the 7th respondent's promotion to the post of P.G. Assistant was illegal since she was holding cross major degree and therefore the consequent promotion of the 7th respondent to the post of Headmaster, from B.T. Assistant post, which was not a feeder post, for promotion to Headmaster post was illegal. The petitioner in effect stated that the 7th respondent was neither qualified for the post of P.G. Assistant nor qualified for the post of Headmaster, Higher Secondary School. The petitioner stated that the School, ignoring qualified candidates like him, selected the 7th respondent on sheer favoritism, even though she did not fall within the



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zone of consideration. The petitioner therefore stated that the impugned orders were illegal, invalid and unsustainable and hence liable to be set aside.

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7. The learned counsel for the petitioner submitted that the petitioner's promotion to the post of P.G. Assistant was illegal, in as much as the petitioner was holding cross major degree which disqualified her for the said post. The learned counsel submitted that as the impugned order promoting the petitioner as Headmistress was passed ignoring seniority, the same could not be sustained. The learned counsel relying on relevant provisions of the Tamil Nadu Higher Secondary Education Service, contended that, as the 7th respondent was holding cross major degree, her promotion to P.G Assistant post was illegal and invalid and her consequent promotion to the post of Headmaster was also vitiated. The learned counsel submitted that the School being a Linguistic Minority School was no doubt, entitled to protection under Article 30 of the Constitution of India, and had a wide right to choose any person as a Headmaster, nevertheless the person chosen should satisfy the prescribed qualifications under the Rules and Regulations. The learned counsel submitted that as the 7th respondent was ineligible for promotion as Headmaster, the impugned order deserved to be set aside.

8. The learned counsels for the School and the 7th respondent on the other hand submitted that as per Rule 15(4)(i) of the Tamil Nadu Recognized Private Schools



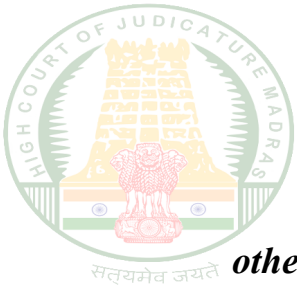
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(Regulation) Rules, 1974, promotion was based on merit and ability, and seniority was to be considered only when merit and ability were approximately equal. The learned counsels submitted that as per Rule 15(6) read with Annexure-V of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, cross major degree was a recognized qualification for promotion to the post of P.G. Assistant. The learned counsels further submitted that the reliance placed by the petitioner on the Special Rules of Tamil Nadu Higher Secondary Education Service was erroneous as the said Rules were unapplicable to the School. The learned counsels submitted it was only the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, that were applicable to the School.

9. I have heard all the learned counsels and perused the materials placed on record.

10. The facts are undisputed and they are not traversed to avoid repetition. The crux of the issue is whether the selection of the 7th respondent to the post of Headmaster in the 5th respondent School is valid or not.

11. The main objections to the selection of the 7th respondent projected by the learned counsel for the petitioner are that seniority was over looked and that the 7th respondent did not possess the requisite qualification for promotion as Headmaster. As far as first objection regarding seniority is concerned, Clause 15(4)(i) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, is relevant. The said regulation reads as follows:



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

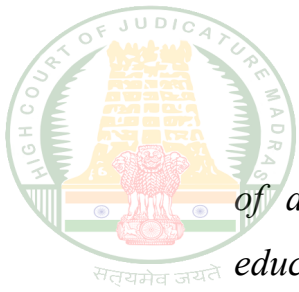
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(4)(i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.”

From a reading of the said rule, it is seen that promotion is primarily based on merit and ability and seniority would have to be considered only when merit and ability were approximately equal. In the teeth of the said regulation, the contention of the learned counsel for the petitioner that seniority was ignored, in my view cannot be accepted.

12. It is also relevant to note here that in so far as promotion to the post of Headmaster is concerned, the School which is a Linguistic Minority Aided School, is given the right to choose the person of its choice, subject of course, to the satisfaction of requisite qualifications prescribed by the rules. The right of the minority educational institutions under Article 30 of the Constitution, to select the Headmaster, cannot be restricted or trampled, except as regards the requirement of eligible qualifications under the rules. The Hon'ble Supreme Court as well as this court have time and again reiterated the above position. The Hon'ble Supreme Court in the case of *Board of Secondary Education & Teaching Training versus Joint Director of Public Instructions, Sagar*, reported in 1998(8) SCC 555 held as follows:

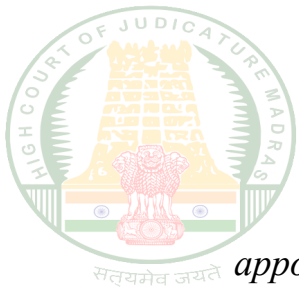
“3. The decisions of this Court make it clear that in the matter



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of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which takes away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in State of Kerala v. Very Rev. Mother Provincial [1970(2) SCC 417] and Ahmedabad St. Xavier's College Society v. State of Gujarat make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant. We need not go into any other question in this appeal."

13. The Hon'ble Supreme Court in the case of *Secretary, Malankara Syrian Catholic College versus T.Jose and others*, reported in, 2007(1) SCC 386, following the aforesaid judgment as well as other judgment of the Hon'ble Supreme Court held as follows:



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“27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.”

The Hon'ble Division Bench of this court in the case of *Eka Ratchagar Sabai Higher Secondary School, rep. by its Correspondent, Salaiputhur, Asirvathapuram (PO), Tuticorin District and another Vs. K.Sumathi and another*, reported in 2007-4-L.W. 617, had an occasion to consider Rule 15(4). While considering the application of Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, to minority educational institutions in para '16' the court held as follows:

“16. Even assuming that Rule 15(4) of the Rules is applicable and therefore the Management had to follow such procedure, there is no requirement in the Rule nor there is any judicial pronouncement laying down that promotion has to be made only on the basis of seniority.....”

It is therefore clear that in the matter of appointment of Headmaster, wide discretion



is given to the School Management to select a person of its choice and also that under

Rule 15(4) promotion need not be based merely on seniority.

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14. Having found that the School has wide discretion to select a person of its choice for promotion as Headmaster, and that promotion is not based merely on seniority, the question next arising for consideration is whether the person chosen by the School possess requisite qualification as per Rules and Regulations for such promotion.

15. The petitioner claims that the 7th respondent was only a B.T. Assistant at the time of her promotion as Headmaster, because her promotion to the post of P.G. Assistant was invalid, as she was holding cross major degrees. The petitioner relies on the Special Rules of Tamil Nadu Higher Secondary Education Service in support of the contention that a person holding a cross major degree was not eligible for promotion to the post of P.G. Assistant.

In my view a bare reading of the said G.O clearly shows that the said G.O is applicable only to Government Schools and not to Government Aided Schools.

16. It is seen that similar view was taken by a learned Judge of this court in W.P.No.1847 of 2023, when identical issue was raised regarding the applicability of G.O.Ms.No.14, dated 30.01.2020, to Minority Aided School. The learned Judge held that the said Government Order was applicable to teachers working in Government Schools and the same was not applicable to Government Aided Schools. Therefore, reliance placed on the said G.O by the learned counsel for the petitioner cannot be



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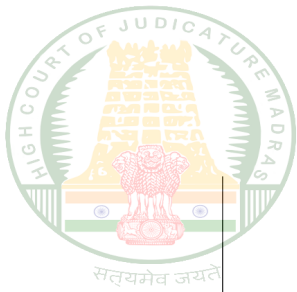
countenanced. The learned counsel thereafter relied on the Tamil Nadu Private Schools Regulation Rules, 2023, published in G.O.Ms.No.12, dated 13.01.2023. In my view even the said Rules do not apply to the present case, since the petitioner was promoted as P.G. Assistant in 2021 itself. In my view the relevant Rules that would apply to the present case are the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. The relevant rule would be Rule 15 and the relevant section in the rule is 6 read with Annexure-V which reads as follows:

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

(6) The Teacher and other persons employed in a private school shall possess the qualification specified in Annexure V.”

IV. QUALIFICATIONS FOR APPOINTMENT AS TEACHERS IN HIGHER SECONDARY SCHOOLS

Name of the post	Qualifications
2. Post-Graduate Assistants in Academic subjects.	(1) A Master's Degree or its equivalent standard in the subject in respect of which appointment is made: Provided that persons holding the certificate in Science and Humanities for Graduate Teachers in High Schools shall be considered for appointment as teachers in the subject relating to Science and Humanities: Provided further that, other things being equal, preference shall be given to those who have studied the same subject in which he has obtained the Post-Graduate degree as main subject under Part III in degree level:



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Provided also that for appointment to certain subjects in which Master's degree are not awarded, persons possessing Master's degree in other subjects shall be considered:

Provided also that a Master's degree in Statistics or its equivalent standard in Statistics shall be an alternative qualification for appointment as subject teachers in Maths by promotion; and (ii) B.T. or B.Ed. Degree or its equivalent.

From a reading of the aforesaid provision, it is clear that possessing cross major degree is not a bar for promotion as P.G. Assistant. The proviso only states that preference would be given to those persons who studied the same subject in both U.G. as well as P.G. level. It is pertinent to note here that in acknowledgment of the said provision the 3rd respondent vide its proceedings dated 07.09.2021, accorded approval to the promotion of the 7th respondent, as P.G. Assistant, with effect from 06.03.2020. I am fortified in my view by the Division Bench judgment of this court in W.A(MD).No.1418 of 2014. The Hon'ble Division Bench in the said judgment held that there was no illegality in considering cross major degrees for promotion as P.G. Assistant. The Hon'ble Court in the said judgment relied on the earlier judgment of this court in *Director of School Education, Chennai-6 and others v. Geldon Wifred Viole and another*, reported in **2009(2) TLNJ 101 (Civil)**.

The relevant portion of the Division Bench Judgment in W.A(MD).No.1418 of



2014, reads as follows:

*“3. The only issue is whether the petitioner, who holds a cross major degree, i.e., who is a B.Sc. [Physics] candidate, holds a Master Degree in English with B.Ed. Qualification, is entitled to be appointed as P.G. Assistant in English. Two contentions are advanced before us. The first one is that in terms of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 and in particular, under Annexure -V of the Rules in Chapter IV(4), the preference is to be given to those persons, who have studied the same subject in degree and Master's degree level. This Rule was considered by the Writ Court and was rightly held that there is no bar, for considering a candidate for appointment, as the Rule provides for grant of preference. Thus, there is no illegality in considering a person with cross major degree. Further, the Writ Court, took into consideration the decision of the Hon'ble Division Bench of this Court in **Director of School Education, Chennai – 6 and others v. Geldon Wifred Viole and another** reported in **2009(2) TLNJ 101 (Civil)** and allowed the writ petition.”*

17. In the light of the law laid down by this court in the aforesaid Division Bench judgment, provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, particularly section 15(6) Read with Annexure-V, in Chapter IV (4), I am of the view that the contention of the petitioner that the 7th respondent did not possess the requisite qualification for promotion to the post of Headmistress since her promotion as P.G. Assistant was illegal for possessing cross



major degree cannot be countenanced. I find no substance in the objections raised by the counsel for the petitioner and hence the same are rejected.

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In view of the above discussions, I find no merits in the writ petition and hence the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

28.04.2025

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
dsn

To

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D.P.I.Complex,
College Road,
Chennai 600 006.

2.The Joint Director of School Education (Personnel)
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Chennai 600 001.

N.MALA, J.

dsn

**PRE-DELIVERY ORDER IN
W.P.No.4549 of 2022**



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Order Delivered on 28.04.2025
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