



W.P(MD) No.8079 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2024

Delivered on : 24.04.2025

CORAM

THE HON'BLE MS.JUSTICE R. POORNIMA

W.P(MD) No.8079 of 2016

and

W.M.P.(MD).No.6598 of 2016

1. K.Raja

2. N.Tamilarasu

3. R.Rajkumar

4. N.S.Muruganantham

... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Secretariat,
Chennai.



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2. The Director of School Education,
DPI Complex, College Road,
Chennai.

3. The Joint Director (Personnel),
Directorate of School Education,
DPI Complex, College Road,
Chennai.

... Respondents

PRAYER: 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 order passed by the 1st respondent in his proceedings in Letter (1D) No.77/M1/2008 dated 15.02.2011 and quash the same and direct the respondents to promote the petitioners as Physical Director Grade II from the date on which their juniors were given promotion with all consequential benefits.

For Petitioners : Mr.V.Panneer Selvam

For Respondents : Mr.V.Om Prakash,

Government Advocate



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ORDER

This Writ Petition is filed by the petitioner with a prayer to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Letter (1D) No.77/M1/2008 dated 15.02.2011 and quash the same and direct the respondents to promote the petitioners as Physical Director Grade II from the date on which their juniors were given promotion with all consequential benefits.

2. The case of the petitioners in brief are as follows :

a) The petitioners and others are working as Physical Education Teachers, claiming promotion to the post of Physical Director Grade II with seniority and other benefits. Since the matter is to be adjudicated, points to be decided, cause of action and relief are all the same. The petitioners joined together and filed a single writ petition and brought to pass a common order.

b) The petitioner passed 10th standard in the year 1987, 12th standard in the year 1989 and passed B.A. Economics in the year 1994

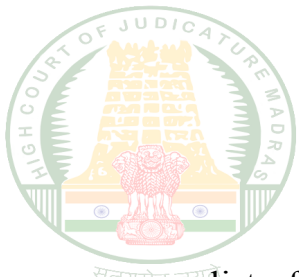


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and M.P.Ed., in the year 1996. The 2nd petitioner passed 10th Standard in the year 1984, 12th Standard in the year 1987, and passed B.A. Economics in the year 1990 and M.P.Ed., in the year 1993. The 3rd petitioner passed 10th Standard in the year 1986, 12th Standard in the year 1988 and passed B.Sc., in the year 1991 and M.P.Ed., in the year 1993. The 4th petitioner passed 10th standard in the year 1984, 12th Standard in the year 1986, and passed B.A., in the year 1989 and M.P.Ed., in the year 1991.

c) The petitioners were consolidated appointed as Physical Education Teachers on 15.11.1996, 20.11.1996 and 12.03.1998 respectively and posted at Government High School and Government Higher Secondary Schools under the School Education Department. They have been working as Physical Education Teachers from the year 1996 i.e., nearly 20 years without any promotion. The next avenue of promotion to the post of Physical Education Teacher is Physical Director Grade II. The respondents published the panel for promotion to the post of Physical Director Grade II as of 01.01.2013 by its proceedings in Na.Ka.No.37606/C4/E2/2012 dated --.02.2015. They had enclosed the



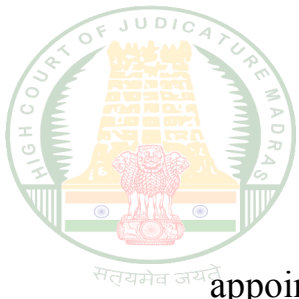
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list of ineligible Physical Education Teachers. The petitioner's name has been included in the ineligible list in Sl.Nos.14, 15 and 17 because of the reason that they acquired M.P.Ed., Degrees directly. The petitioners made a representation to the respondents on 24.02.2015 to consider and include their names in the panel for promotion to the post of Physical Director Grade II.

d) The M.P.Ed., course is concerned, it was started at Alagappa University, Karaikudi, in the year 1986 as an integrated course i.e., one-year B.P.Ed., Syllabus and one-year M.P.Ed., Syllabus i.e., two years course. Prior to 1986, B.P.Ed., was one year course, and M.P.Ed., was one year course. In the year 1986, Alagappa University, Karaikudi started an M.P.Ed., Two-years integrated course i.e., one year B.P.Ed., Syllabus and one year M.P.Ed., Syllabus.

e) The petitioners passed M.P.Ed., at Alagappa University. Therefore, they are fully qualified for promotion to the post of Physical Director Grade II. The Government also issued G.O.(Ms)No.26, School Education (M1) Department dated 27.02.2003 for the post of Physical Education Teacher included M.P.Ed., as qualification for the



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appointment. The panel for promotion to the post of Physical Director Grade II was published for the qualified persons as of 01.01.2010. In that panel also they excluded the persons who studied M.P.Ed., directly.

f) Immediately, they made representation to the respondents that they have studied integrated courses namely one-year B.P.Ed., and one-year M.P.Ed., Syllabus. Considering the same, the second respondent issued proceedings on 25.08.2011 including the persons who studied M.P.Ed., directly and they have been promoted as Physical Director Grade- II. Therefore, again excluding the petitioner's name for the very same reason that they have studied M.P.Ed., directly which is discrimination. Therefore, petitioners 1 to 3 filed writ petitions in W.P. (MD).Nos.7145 to 7147 of 2015 before this Court seeking a Writ of Mandamus to include their name in the panel for promotion to the post of Physical Director Grade II as of 01.01.2013 and to give promotion to the post of Physical Director Grade II. The Court was pleased to dispose of the writ petition by directing the respondents to consider the representation and pass appropriate orders after affording an opportunity of hearing by its order dated 29.04.2015.



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g) But, the second respondent passed the impugned order on 19.08.2015 rejecting the claim without considering the facts. Therefore, challenging the same, the petitioners filed a writ petition in W.P. Nos.17289 to 17291 of 2015 and the same is pending before this Court with interim direction to keep one post vacant for each. Again, the respondents published the panel on 23.02.2016, including the petitioner's name in the ineligible list i.e., in Sl.Nos.12, 13, 15 and 22. The petitioners recovered the letter dated 15.02.2011 recently. Hence, the petitioners are constrained to file the present writ petition with the following among other grounds:

i) The petitioners were appointed as Physical Education Teachers by considering their educational qualification of M.P.Ed., integrated course i.e., one-year B.P.Ed., and one-year M.P.Ed. B.P.Ed. is the qualification for the post of Physical Education Teacher. Accepting the qualification of the petitioners i.e., one-year B.P.Ed., and one-year M.P.Ed., they were appointed as Physical Education Teachers. The qualification for promotion to the post of Physical Director Grade II is a B.P.Ed.,. Once, the qualification of the



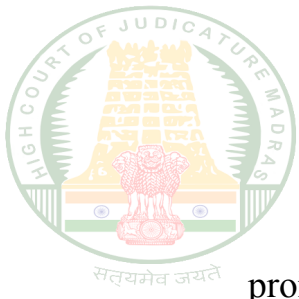
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petitioners is accepted for appointment, the same cannot be denied for promotion. Hence, the impugned order is liable to be set aside.

ii) The Government issued an order in G.O.Ms.No.26, School Education Department dated 27.02.2003 amendment to Tamil Nadu School Educational Subordinate Service Rules fixing the qualification for the post of Physical Education Teachers. Once, the Rule is amended the Government has no authority to issue orders violating the rules and imposing additional conditions denying promotion. As per the settled proposition, the Government Letter cannot override the Rules.

iii) In a similar situation, the respondent excluded the names for the reason that they acquired M.P.Ed./M.P.Es., integrated course. The four persons appealed to the second respondent stating that integrated course is eligible for appointment to the post of Physical Education Teacher and the same was considered by the third respondent who issued direction to include their names in the panel for promotion by his proceedings dated 25.08.2011 and as per the proceedings their names were included in the panel and they got



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promotion. Once, the very same issue was considered by the respondent and issued a promotion order accepting the contention, the same benefit cannot be denied to the petitioners.

iv) The transfer of promotion is concerned with the above-mentioned rights the petitioners have been working as Physical Education Teacher for the past 20 years. Their promotion avenue cannot be denied indiscriminate manner.

v) The petitioners are fully qualified for promotion to Physical Director Grade II. Once the qualification issued was raised in the earlier panel the qualification for the similarly placed persons was raised by the Department. They have been included in the panel and permitted the post of Physical Director Grade II. The impugned order was not served to the petitioners. Hence, the present writ petition.

3. The learned Government Advocate appearing for the respondents filed counter and argued that the above teachers were appointed as Physical Education Teachers and posted in various schools with the qualification of M.P.Ed., without a basic degree ie B.P.Ed., or



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certificate, a course in Physical Education. Hence, at the time of their appointment, he has been specifically informed that they are not eligible for any incentive increment because of their qualification. The above petitioners were appointed as Physical Education Teachers with a direction to obtain B.P.Ed.

4. In the past there existed the post of Grade-I and Grade-II Physical Education Teachers in Government High and Higher Secondary Schools. In due course, the Grade-II posts of Physical Education Teachers have been abolished. The qualifications for the appointment of Physical Education Teachers in Government High and Higher Secondary Schools have been prescribed as follows :

Qualification (1)	Date of effect (2)	G.O.No. & date in which it was approved (3)
(i) Pass in Pre-University or Higher Secondary or ESLC (Secondary Grade or Senior Basic) and Government Teachers Certificate of Higher Grade in Physical Education	15.07.1985	G.O.(Ms)No.1440, Education, dated 14.09.1987



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(ii) Pass in SSLC and Government Teachers Certificate of Lower Grade in Physical Education	15.07.1985	G.O.Ms.No.1440, Education, dated 14.09.1987
(iii) Bachelor of Physical Education (B.P.Ed.,)	08.04.1986	Govt. Lr.No.14878/M1/86-2 dated 08.04.1986
(iv) Bachelor of Physical Education and Sports (B.P.Es.) Offered by YMCA College of Physical Education, Chennai.	29.06.1993	G.O.Ms.No.236,P&AR dated 29.06.1993
(v) Master of Physical Education and Sports (Direct PES without acquiring BPES) offered by Annamalai University	31.01.2000	G.O.Ms.No.27, School Education dated 31.01.2000
(vi) Bachelor of Mobility Science for the disabled (B.M.S.)	20.09.2001	G.O.Ms.No.155, School Education Dated 20.09.2001
(vii) M.P.Ed.,	27.02.2003	G.O.Ms.No.26, School Education (M1) Department, dated 27.02.2003.

5. Therefore, the qualification for the post of Physical Education Teacher shall be deemed to have come into force on 27.02.2003. The appointment made on or after the said dates will be as per rules and the appointment made before the said date will be treated as unqualified.



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6. As per G.O.Ms.No.26, School Education (M1)

Department dated 27.02.2003, the qualification of M.P.Ed., will take effect only from 27.02.2003. It has also been specifically mentioned in the Government Order that the Physical Education Teachers appointed with direct M.P.Ed., qualifications, are not eligible for incentive increments for such qualifications. At the time of appointment, the petitioners did not possess the required basic qualification but possessed M.P.Ed., qualification without B.P.Ed.,

7. The petitioner's service has been regularized and he was been declared to have satisfactorily completed the period of probation. The petitioners have submitted false particulars in their pleadings because no one else was appointed regularly. The petitioners suppressed the vital information of their pleadings. The Government decided to include M.P.Ed., as one of the qualifications for appointment as Physical Education Teachers in High and Higher Secondary Schools of Tamil Nadu with or without B.P.Ed., in G.O.Ms.No.26, School Education Department dated 27.02.2003. According to the said amendments issued



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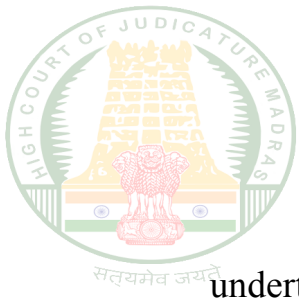
in the Government order, the orders prescribing the qualification of M.P.Es., without B.P.Es., will take effect from 31.01.2000 and M.P.Ed., without B.P.Ed., will take effect from 27.02.2003.

8. The petitioners appointed before the date of amendments.

Hence, the Government Issued an order in Letter No.ID/No.77-M1/2008 dated 15.02.2011. The relevant portion is extracted hereunder :

"Although the appointments of the persons as Physical Education Teachers without acquiring the B.P.E.S. or B.P.Ed., by acquiring directly M.P.E.S. Or M.P.Ed., are treated as appointed against the rules that were in vogue at the time of their appointments, and since the services of most of the above persons have been regularized and declared to have satisfactorily completed the period of their probation, and hence the persons may be allowed to continue in service, however no promotion or incentive increments need to be given."

9. The petitioners allowed to continue in service on conditional basis that they will not be eligible for any incentive increments or further promotions. Once, the petitioners had given an

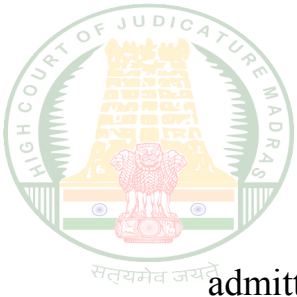


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undertaking for not claiming an incentive increments they should not go back and claim it after opting their declaration. The Writ petition in W.P.No.17289, 17290 and 17291 of 2015 are pending before this Court. Since petitioner not having prescribed qualification and cannot be permitted to higher post on the possession of qualification without B.P.Ed., The orders of Hon'ble Supreme Court of India cannot be cited as a precedent for the claim of promotion is not fundamental right. The appointment of the person as Physical Education Teacher on or before 27.02.2003 with the intermingled degree M.P.E.S./M.p.Ed., are clearly as against the rules there were in vogue at the time of their appointments as per G.O.Ms.No.26, School Education Department dated 27.02.2003. Hence, they were not qualified at the time of their initial appointments.

10. The course B.P.E.S./B.P.Ed., is distinctly different from intermingled course of M.P.E.S / M.P.Ed., courses cannot be equated on part with the regularly appointed Physical Education Teachers with basic qualification. Once the relaxation is given to such persons they cannot be treated on par with regular candidates. The petitioners themselves



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admitted that the service have been submitted to the Government and the same was pending after knowing the actual position. The petitioners approached this Court as pre-matured. The order issued in Government letter are as per rules and law on the basis of the relaxation orders and conditions which the petitioner was appointed. After accepting the condition at the time of appointment and availed the concessions and now going back is after thought decision and it is not permissible under law. Therefore, he prayed to dismiss the present writ petition.

11. Heard the learned counsel on either side and perused the materials available on record.

12. The petitioners obtained an M.P.Ed., degree from Alagappa University, Karaikal in the year 1986. As per G.O.(Ms)No.26, School Education Department, dated 27.02.2003, recognized the M.P.Ed., degree is the qualification for appointment of Physical Education Teachers.

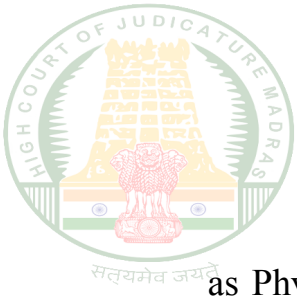


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13. In the year 1986, Alagappa University started an M.P.Ed., integrated course, which included a one-year B.P.Ed., syllabus and a one-year, M.P.Ed., syllabus. The first petitioner obtained an M.P.Ed., degree in the year 1996 while other petitioners obtained the said degree in the years 1991 and 1993. All of them were appointed as Physical Education Teachers from the year 1996 onwards. However, they were not considered for promotion. The respondents rejected their request on the ground that as per the rules in force at the time of appointment candidates were required to possess a B.P.Ed., degree for the post of of Physical Education Teacher. Since the petitioners obtained an M.P.Ed., degree directly without obtaining a B.P.Ed., degree they were deemed ineligible.

14. It is admitted that the petitioner's qualification was accepted by the respondents at the time of their appointment. Subsequently, probation was also declared and completed and the petitioners were provided with increments and allowed to continue their service. The petitioners acquired qualifications and they were appointed



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as Physical Education Teachers and continued their service for 26 years without any promotion avenue. At present the respondents approved direct M.P.Ed., degree as a qualification for appointment of Physical Education Teacher.

15. Under the circumstances, unless there are other disqualifying factors, the petitioners should not be denied promotion or incentive increment, purely based on educational qualification, which was accepted subsequently to the appointment.

16. Once the education qualification is accepted by the employer and the person is confirmed in service, the employer is estopped from later, rejecting that qualification for promotion and other benefits unless it is proved that fraud or misrepresentation is proved, if the denial is so based on the qualifications, already accepted.

17. The petitioners were put long service, denying a promotion after such a long period without any unsatisfactory



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performance can be considered unfair and unjust.

18. Therefore, the impugned order passed by the 1st respondent is arbitrary and against the principle of natural justice and hence, the impugned order is liable to be quashed.

19. Therefore, the Writ Petition stands allowed and the impugned order dated 15.02.2011 on the file of the first respondent is hereby quashed. The respondents are directed to promote the petitioners as Physical Director Grade II from the date on which their juniors were given promotion with all consequential benefits. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

24.04.2025

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

gvn/RM

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To

1. The Secretary,
State of Tamil Nadu,
School Education Department,
Secretariat,
Chennai.
2. The Director of School Education,
DPI Complex, College Road,
Chennai.
3. The Joint Director (Personnel),
Directorate of School Education,
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