

(2009) 10 MAD CK 0164
In the Madras High Court
Case No : Writ Petition No. 25002 of 2006

L. Gopal

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 29, 34, 41, 45, 45(2)
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15, 15(4), 15(4A)

Citation : (2010) 1 MLJ 175

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R. Muthukumarasamy for K. Ravichandra Babu, for the Appellant; A. Suresh, Government Advocate (Education) for Respondents Nos. 1 to 4, M. Hidayathulla Khan and C. Selvaraj for S. Mani, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The order of the first respondent in G.O. No. 223, School Education Department, dated 10.07.2006, is under challenge in this Writ Petition, filed by the petitioner.

2. The case of the petitioner is as follows:

2.1 The fifth respondent school is a private recognized fully aided school having standards from 6 to 12. The previous Headmaster of the school retired on superannuation on 31.05.2003 and, therefore, the post of Headmaster became vacant from 01.06.2003. In the said school, 10 P.G. Assistants are working, including the petitioner as a P.G. Assistant (Physics), who was appointed on 12.06.1985, and he is having previous experience as a P.G. Assistant (Physics) from 31.12.1983 to 01.06.1985, having worked in Vivekananda Higher Secondary School, Thiruvudagam, Madurai District, which is also a private aided school. The petitioner also served as a P.G. Teacher from 06.10.1982 to

31.03.1983 in Sennimalai Kumarappa Higher Secondary School, Erode District, and for the said purpose also, the Department paid salary as P.G. Assistant to the petitioner. Thus, the petitioner was having the experience of fully qualified service of 19 years 5 months and 1 day on the date of his selection as Headmaster. The sixth respondent is having only 18 years 2 months and 19 days of experience as on the date of selection, even though he had joined in the school as a P.G. Assistant (Commerce) on 13.03.1985. The other P.G. Assistants, even though joined in the year 1985, were not interested for the post of Headmaster, as they had not applied for the same.

2.2. The Petitioner and the sixth respondent submitted applications for the post of Headmaster before the fifth respondent School Committee. The School Committee meeting was held on 06.11.2003 for selecting the Headmaster of the school. The School Committee considered the merit and ability of the eight P.G. Assistants and found that the sixth respondent possessed the following degrees :- M. Com., B.Ed., M.Ed., M.A.(Economics), M. Phil. (Commerce), and passed Office Manual and D.O.M. Tests conducted by the T.N.P.S.C. In so far as the petitioner is concerned, he possessed the following degrees :- M.Sc. (Physics), B.Ed., M.Ed., M. Phil.(Education), M.A. (History), M.A. (Sociology) and M.A. (Economics), Deputy Inspector for Educational Statistics Paper-I and Deputy Inspector Paper II, relating to Elementary School, D.O.M. Test, Certificate in Office Automation in Computer Training through S.I.S.I. and also he had completed course in M.A. Population Studies in Annamalai University. The petitioner was also given Best Teacher Award for 2000-2001 by the Rotary Club of Mettur, Salem District. He was also Headmaster In-charge of the school from 01.04.1993 to 17.07.1994; Chief Examiner for the +2 practical examinations held in March,1994, Chief Superintendent for S.S.L.C. Examination in September and Departmental Officer for the conduct of +2 Examination in March,2001 and 2003. The School Committee, assessing the merit and ability of the eight P.G. Assistants, including the petitioner and the sixth respondent, and also taking into consideration the previous experience of the petitioner, selected and appointed the petitioner as Headmaster of the school from 07.11.2003 in the selection post and accordingly he is functioning as the Headmaster of the school from 07.11.2003 onwards.

2.3. The said appointment of the petitioner was challenged by the sixth respondent before the second respondent by filing an appeal on the ground that he was the senior most teacher in the fifth respondent school. The second respondent, based on the appeal filed by the sixth respondent, invited remarks from the petitioner and the fifth respondent. After getting remarks, the second respondent considered the appeal filed by the sixth respondent and passed orders through his proceedings M.M. No. 97967/Wa/03, dated 19.05.2004, rejecting the appeal, holding specifically that based on merit and ability, the petitioner was better placed and that the petitioner, apart from having P.G. Degree in the relevant subject, also passed M.A. Degree in Economics, Sociology and History, M.Ed., M. Phil. (Education), whereas the sixth respondent passed M.

Com., M.A. in Economics, M.Ed., and M. Phil. (Commerce) and therefore the selection of the petitioner as Headmaster of the school of the fifth respondent school, on the basis of merit and ability, was perfectly in order.

2.4. Peeved at the above order, the sixth respondent filed a revision petition before the first respondent on 12.08.2004. Thereafter, the first respondent called upon the petitioner through his letter, dated 04.03.2005, to appear for personal hearing on 15.03.2005 and to make his submissions. Accordingly, the petitioner appeared in person before the first respondent and gave a detailed objection in writing dated 15.03.2005. By another letter dated 22.04.2005, the first respondent called upon the petitioner to give a further representation within fifteen days, to which the petitioner once again submitted his objections, dated 09.05.2005, in writing.

2.5. The first respondent, without considering any of the objections made by the petitioner dated 15.03.2005 and the subsequent objections dated 09.05.2005 and the position of law involved in the case as well as in total ignorance of its own G.O. No. 305, dated 10.08.1998, passed an order in G.O. No. 223, dated 10.07.2006, and allowed the revision filed by the sixth respondent, setting aside the order of the second respondent, dated 19.05.2004. Hence, this Writ Petition.

3. Respondents 1 to 4 have filed a counter affidavit, stating as under:

3.1. The petitioner, P.G. Assistant in Physics and served in fifth respondent school from 12.06.1985, was promoted and appointed as Headmaster of that school with effect from 07.11.2003 in the vacancy caused by the retirement of M. Venkatachalapathy from 31.05.2003, against which, the sixth respondent, who was P.G. Assistant in Commerce serving in fifth respondent school and senior to the petitioner, preferred an appeal to the Joint Director of School Education (Higher Secondary), Chennai, second respondent herein, challenging the appointment of the petitioner as Headmaster of that school and requesting promoting him as Headmaster, cancelling the appointment of the petitioner. Following the same, the second respondent called for remarks of the Chief Educational Officer, Salem, third respondent. Accordingly, the third respondent submitted his remarks to the second respondent. After examining the appeal petition of the sixth respondent and the remarks of the third respondent, the second respondent passed an order, dated 19.05.2004, rejecting the appeal.

3.2. Aggrieved over the same, the sixth respondent preferred a revision u/s 45 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, (in short, "the Act") to the Secretary to Government, School Education Department, first respondent, requesting to cancel the orders of the second respondent, dated 19.05.2004, and promoting him as Headmaster in the place of the petitioner, whereupon, the Government, in their letter No. 26694/VE/2004-3, School Education Department, dated 22.04.2005, informed the petitioner that with reference to Rule 15(4)(i) of the Tamil Nadu Recognised Private School Regulation Rules, 1974, (in short, "the Rules") promotion shall be made on the

basis of merit and ability and seniority shall be considered when merit and ability are approximately equal. Sixth respondent is senior to the petitioner, as he joined in the school on 13.03.1985, whereas the petitioner joined on 12.06.1985. Comparing the educational qualifications of both the petitioner and the sixth respondent, the petitioner was given preference for possession of more educational qualifications in various subjects, for which there was no provision in the rules. Therefore, the Government considered that it was incorrect in not giving promotion to the sixth respondent, who was senior in service, and to issue final orders, cancelling the order of the appellate authority, dated 19.05.2004, on the revision petition of the sixth respondent. The petitioner was also informed that if he had any objection on the stand taken by the Government, he may submit his representation within 15 days, in compliance of Section 45(2) of the Act. The petitioner, in his letter dated 09.05.2005, submitted his representation and prayed the Government to pass orders to dismiss the revision filed by the sixth respondent. After going through the revision of the sixth respondent and the representation of the petitioner, the Government, in their G.O.Ms. No. 223, School Education (VE) Department, dated 10.07.2006, issued orders rejecting the orders of the appellate authority and accepting the revision of the sixth respondent.

3.3. As a general principle, it is the responsibility of the management of the school to call for the willingness of all the P.G. Teachers, who are having enough qualification to hold the post of Higher Secondary School Headmaster and then proceed further to choose the person from among the P.G. Teachers according to the rules whenever vacancy arises for the post of Headmaster. The said principle was not followed by the management of the school. Instead, the management predetermined the petitioner for the post of Headmaster and appointed him with effect from 07.11.2003.

3.4. The G.O.Ms. No. 305, School Education (D-2) Department, dated 10.08.1998 is not applicable to the case of the petitioner, as the services rendered by him in other recognised aided schools of this State from 06.10.1982 to 31.03.1983 and from 31.12.1983 to 11.06.1985 was counted only for the fixation of pay and sanction of increments in the fifth respondent school from the date of his joining i.e., from 12.06.1985. Therefore, for the purpose of seniority in the fifth respondent school, the services put in by the petitioner in the recognized schools of this State cannot be taken to determine the seniority for appointment to the post of Headmaster in the fifth respondent school. As such, the Writ Petition is liable to be dismissed.

4. The stand of the fifth respondent is that the post of Headmaster became vacant on 31.05.2003; 10 persons applied for the post; no interview was conducted; the Committee, after eliminating two persons viz., Arumugam and Chitra, considered the remaining 8 persons and selected the writ petitioner for the post of Headmaster and appointed him and that the minutes of the meeting would reveal that the claim of the petitioner was considered and the merits of

other persons had been ignored.

5. The sixth respondent has also filed a counter, stating as follows:

He joined as a P.G. Assistant in Commerce on 13.03.1985 in the fifth respondent school. He has got the required qualification of M.Com., B.Ed., and M.A. in Economics, which is one of the subjects in Higher Secondary Section and M.Ed. and M. Phil. The writ petitioner joined as a P.G. Assistant on 12.06.1985 in Physics in the fifth respondent school with M.Sc., B.Ed. In the seniority list, he is No. 2 and the writ petitioner is No. 5. The post of Headmaster became vacant in 1993. The management promoted and appointed the writ petitioner as Headmaster overlooking number of seniors and inasmuch as the writ petitioner was No. 7, he was unable to administer the school. The school faced a number of agitations rather the Management itself was put in tough time, which resulted in reduction of result to 35% in Plus 2. There was great agitation against the writ petitioner and he was reverted as his promotion was not approved by the Department. The management, by not conducting any interview, promoted the writ petitioner as Headmaster, ignoring the academic qualification possessed by the sixth respondent in the relevant subject and also higher percentage of result in the subject where he took the class. As against the same, he filed an appeal. The appellate authority did not properly consider his case and dismissed the appeal. Further aggrieved, he filed a revision before the Government. The Government, after calling for remarks and report, was pleased to set aside promotion of the writ petitioner and directed to appoint him as Headmaster, considering merit and ability as approximately equal and being senior and, as such, this Writ Petition is liable to be dismissed.

6. Learned Senior Counsel for the petitioner would contend that the petitioner is fully qualified and more meritorious and able than the sixth respondent to the post of Headmaster of the fifth respondent school and as such the appointment of the petitioner is strictly in accordance with Rule 15 (4) (i) of the Rules. He would further contend that the first respondent erred in holding that both the petitioner and the sixth respondent are equally qualified and their merits and ability are one and the same and the said finding is without application of mind to the various academic qualifications acquired by the petitioner than that of the sixth respondent. The learned Counsel would lastly contend that the G.O.Ms. No. 305, dated 10.08.1998 permits to count also the service period of the person who worked in other recognised schools for the purpose of appointment of Headmaster in the Higher Secondary Schools, which aspect was not considered by the first respondent. He relied upon the following decisions:

(i) B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., :

The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. On the other hand, as between the two principles of seniority and merit, the criterion of "seniority-cum-merit"

lays greater emphasis on seniority. But an officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

(ii) A. Murugeswari v. The Director of School Education, Chennai-6 and Ors. 2006 (3) CTC 103:

15. In any event, I am of the considered view that it is for the management to decide about the merit and ability and not for the respondents 1 to 3, as per the Tamil Nadu Recognised Private Schools (Regulation) Act. It is the School Committee which is the appointing authority and also makes promotion which alone can decide about the merit and ability of the candidates. When once it is admitted even by the 1st respondent himself in the impugned order that both the petitioner and the fifth respondent having merit and ability, it was only for the fourth respondent who was being appointing authority and promoting authority to decide about the relative merit and ability. When once the fourth respondent has admittedly decided to appoint and promote the petitioner as P.G. Assistant in Tamil, in my considered view, it is not appropriate for the first respondent to make a relative assessment of merit and ability. As correctly pointed out by the learned Senior Counsel for the petitioner it is under the Annexure III (III) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the authority has got a right while releasing the grant to verify and satisfy as to whether the appointments are made by the schools under rules in force.

16. While admittedly, it is the case of the respondents 1 to 3 that the appointment of the petitioner was not made against the rules, it is not for the respondents 1 to 3 to interfere with the affairs of the fourth respondent especially to state that to assess the merit and ability of the petitioner and the fifth respondent. The curious aspect in this case is that even in the assessment in the impugned order between the petitioner and the fifth respondent apparently, the petitioner stands better than the fifth respondent even on merit and ability.

(iii) S. Sethuraman Vs. R. Venkataraman and Others, :

3. Rule 15(4) of the Rules provides that promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. Admittedly, the Managing Committee of the school made comparative evaluation of merit and ability of the appellant vis-a-vis Respondent 1 and opined that the merit and ability of the former is better than the latter. Some other factors including the one that the first respondent was holding the post of Secretary and Correspondent in another school were also taken into consideration. The appellant was, therefore, appointed to the post of Headmaster in the school.

16. The terms and conditions of service of the teachers of an aided school are governed by the Act and the rules framed there under. The Managing Committee of the school in terms of Rule 15 of the Rules are enjoined with a duty to fill up

the post of Headmaster primarily on the basis of "merit and ability". Indisputably, the Committee while appointing a person must take into consideration the merit and ability of the candidate alone and only when the respective merit and ability of two candidates are equal, seniority will have some role to play. Respondent 1 is senior to the appellant only by 13 days. At the relevant point of time, the appellant had passed the prescribed Accounts test for Headmasters conducted by the Tamil Nadu Public Service Commission in the year 1989. Before us various other factors have been placed for the purpose of showing that apart from the fact that the appellant was more qualified, Respondent 1 having regard to his past services should not have been considered suitable for appointment to the said post.

17. While exercising the appellate jurisdiction, the appellate authority has indisputably a plenary power. It may not only consider the respective educational qualifications and other activities of the respective candidates for the purpose of arriving at a decision as to which of the two candidates had better merit and ability, but it should exercise its jurisdiction keeping in view the views of the Managing Committee. If two views are possible, ordinarily, the view of the Managing Committee should be allowed to prevail.

27. For the purpose of judging the respective merit and ability of the candidates, their extracurricular activities may be taken into consideration but evidently the appellate authority took into consideration a large number of irrelevant factors, we may notice some of them, which are only illustrative in nature:

- (i) Participated as a spectator in the Fifth World Tamil Conference held in 1981.
- (ii) Conducted literary association meetings.
- (iii) Involved himself in religious, musical service and human relation service.
- (iv) Served in Homeguards.
- (v) Undergone computer training.

28. It also failed to take into consideration the relevant fact which inter alia weighed with the Managing Committee of the school as also the order of the appellate authority that as he had served as a Secretary and correspondent in some other schools and, thus, he had not been giving all the attention to his teaching works.

29. The appellate authority failed to take into consideration the fact that the appellant had passed the Accounts test. Even if the same was not relevant, although there existed a Government Order in this behalf, if other activities can be treated to be acts of merit, we fail to understand as to why acquisition of a higher qualification for the purpose of holding the post of Headmaster which would be helpful to him in his functioning as a head of an educational institute would not be relevant. Similarly, the question as to whether the "passing percentage" of the students in the subjects taught by the appellant or

Respondent 1 for five years was 98% or 100% may not be of much significance.

7. On the other hand, learned Senior Counsel for the sixth respondent would contend that the proper yardstick for assessing the merit and ability is the percentage of the results of the students and that the sixth respondent alone is senior to the petitioner, as he joined the fifth respondent school prior to the joining of the petitioner and, therefore, the order passed by the first respondent does not warrant any interference. The learned Counsel has cited a decision in *P. Thurai Pandian v. K. Subramanian and Ors.* 2009 (3) TLNJ 436 (Civil), in which it is held as under:

13. The Joint Director (School Education) may be an appellate authority but there is nothing to show that the statute provides for "finality" of his decision. The appellate authority itself did not hold any viva voce to judge the respective suitability of the contenders to the post. Apart from the respective qualifications of the candidates and/or adverse reports of the C.E.O. against the first respondent, he did not consider any other aspect of the matter.

14. The Selection process adopted by the Management of the School was unconstitutional. A deliberative process amongst the members of the Selection Committee to choose the best candidate available for promotion was imperative to the post of Head Master was imperative in nature. The Selection Committee and for that matter the Management of the School must not only function in terms of the provisions of the statute, they were required to maintain fairness in the selection making process. Secret ballot would not be a fair procedure for selecting a candidate for the post of Head Master of a school in view of the fact that holder of the said post should not only possess the educational qualifications but also seniority and administrative ability. The Selection Committee is required to consider other qualities of the candidates also for holding the post of Head Master of an institution.

8. I have heard the learned Counsel for the parties, gone through the records and also given my thoughtful consideration to the rival submissions.

9. As per Rule 15 (4) (i), promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

10. For evaluating merit and ability of a teacher, the educational and professional qualifications possessed by him which are more relevant in the field of teaching the subjects concerned alone need be considered. The possession of other qualifications and more number of degrees outside the purview of the teaching subjects by a teacher is not a relevant factor to find out merit, ability and suitability. In other words, merit and ability can be assessed only in respect of the required relevant qualifications and the percentage of the results produced by the teacher in the subjects he handles. Merit does not mean acquisition of more number of degrees.

11. The required qualification for the post of P.G. Assistant and the Headmaster is P.G. Degree in the subject concerned and B.Ed. The sixth respondent is an M.Com., B.Ed. and the writ petitioner is an M.Sc., B.Ed. In addition, the sixth respondent has got M.Ed., M. Phil. and also M.A. in Economics. The possession of M.A. Economics is related to the subject. He is a P.G. Assistant in Commerce, taking classes for two optional subjects in +2 i.e., Commerce and Accountancy separately. Coming to the writ petitioner, he is a P.G. Assistant in Physics, taking classes only for Physics students. Therefore, the possession of Master Degrees by him in various disciplines, namely, M.Sc. (Physics), B.Ed., M.Ed., M. Phil. (Education), M.A. (History), M.A. (Sociology) and M.A. (Economics), is not a matter to be looked into for the promotion as Headmaster, since he is not teaching the said subjects to the students in Higher Secondary classes of the School.

12. Both the petitioner and the sixth respondent are having the required qualification. Both of them are having M.Ed. and M. Phil. in the relevant subjects. The only yardstick for the assessment of merit and ability is the performance of the students, which is a reflecting mirror of the teacher. The sixth respondent is taking classes in two subjects i.e., Commerce and Accountancy, which are separate optional subjects for the Higher Secondary level, whereas the writ petitioner is taking classes only in Physics. Commerce and Accountancy are only theory papers and no practical marks are involved and the students' efficiency cannot be boosted whereas in Science subject, out of 200, 150 marks are for theory and 50 marks are for practical. Invariably and uniformly to help the students and also to boost the result, all the students in the Higher Secondary level are given 50 out of 50 marks in practical normally and the rest of the marks i.e., through which efficiency is projected is 150. In this system, the percentage of result of every year alone will be the proper yardstick. The percentages of pass in Commerce for the years 1999,2000,2001,2002 and 2003 are 99%,98%,90%,95% and 97% respectively and in Accountancy, the result of the students is 100%,100%,93%,89% and 98% for the said periods. Coming to the result of the students in Physics, which is handled by the writ petitioner, it is 93%,98%,91%,88% and 82% for the said periods.

13. Therefore, a reading of the results would go to show as to how the students have been taught by the teachers concerned. In fact, as stated above, in Physics, 50 marks are uniformly given to the students for practical. Even then, the percentage of results in the subject handled by the petitioner is comparatively lower than that of the sixth respondent in the subjects Commerce and Accountancy. Therefore, it cannot be said that the writ petitioner is more meritorious than the sixth respondent.

14. Coming to seniority, the sixth respondent is No. 2 and the writ petitioner is No. 5 as per the seniority list published on 01.06.2003 when the post of Headmaster became vacant. That being so, when both the writ petitioner and the sixth respondent are having minimum required educational qualifications,

naturally, the senior has to be preferred. In this case, the sixth respondent being the senior, the appointment of the writ petitioner was set aside by the revisional authority, allowing the revision filed by the sixth respondent.

15. G.O.Ms. No. 305, dated 10.08.1998, relied upon by the petitioner, cannot be of any avail to the petitioner, as the counting of services rendered by the teacher in other schools is not the sole factor for considering the merit and ability. In fact, the relevant consideration to assess the merit and ability would be the result of the students. If the teacher is able, he will produce good number of results. Therefore, except the percentage of result, there can be no other better yardstick to assess the ability of a teacher. Since the sixth respondent has got more percentage of result in the school in the subjects he handled, the first respondent, namely, the Government came to the conclusion that merit and ability of the two persons are approximately equal and, therefore, senior has to be given promotion. In fact, merit and ability could not be said as equal, as the sixth respondent has got an edge over the writ petitioner, inasmuch as he has produced more result than that of the writ petitioner.

16. Going by Rule 15(4)(i), merit and ability coupled with seniority are only in favour of the sixth respondent but not the petitioner, as claimed by him. Further, there is no provision in the rules, giving preference to the persons, who are having more educational qualifications than the educational qualifications prescribed in the rules for appointment to the post of Headmaster. Therefore, in my considered opinion, it was not correct in not promoting the sixth respondent as Headmaster of the School in the existing vacancy. The order impugned of the first respondent was issued only after analysing all the facts of the case and after affording sufficient opportunity to the petitioner as well as the sixth respondent, to make their submissions, as required under the Act.

17. When the aggrieved person, namely, sixth respondent filed an appeal before the Joint Director, he projected many irregularities committed particularly downward result when the writ petitioner was In-charge Headmaster. As In-charge Headmaster, he was asked to be the Chief Superintendent and to conduct public examinations. The Committee was under the impression that it was academic merit, but, factually, it was only automatic duty of the Headmaster or In-charge Headmaster, as the Chief Superintendent in the Examination Centre. It could be seen that when the petitioner was given In-charge Headmaster in the school during 1993-1994, there were lot of problems and he was not able to effectively administer the school and he had no overall control over the teachers, which resulted in reduction of the result of 10th and +2 examinations. It is also noticed that a wrong picture had been projected before the School Committee, which resulted in ignoring the fact of senior most in the school. While furnishing the details, total length of service in respect of the petitioner as 19 years and 5 months and in case of the sixth respondent 18 years and 2 months was given. Services rendered by the petitioner in other schools had been projected as the service rendered in the school in question. As a matter of fact, as far as the fifth

respondent school is concerned, the petitioner joined only on 12.06.1985, whereas the sixth respondent on 13.03.1985. In the seniority among the P.G. Assistants in the school, the sixth respondent is No. 2 and the writ petitioner is No. 5. First person in the seniority namely Arumugam was not eligible and he was due to retire on 30.06.2003. Since the merit of the sixth respondent was not available, the School Committee had not considered, discussed and assigned any reasons for overlooking the senior. So, the sixth respondent is senior to the petitioner.

18. The impugned order was passed by the first respondent in favour of the sixth respondent, considering the fact that he had secured high percentage of result as a P.G. Teacher in two subjects viz., Commerce and Accountancy, whereas the petitioner was the subject teacher only in Physics. If five years' results from 1999 to 2003 are taken into consideration, performance of the petitioner is comparatively lower than that of the sixth respondent. The sixth respondent has brought result in two subjects above 90 to 100% whereas the petitioner has not even secured 100% result in any year though he is in-charge of single subject. If the performance of the petitioner and the sixth respondent in their subjects is taken into consideration, the sixth respondent alone is having merit over the petitioner. Therefore, merit and ability, as contemplated under Rule 15 (4) (i) of the Rules, are more in favour of the sixth respondent rather than the petitioner, besides seniority. As already stated, when merit and ability are obviously in favour of the sixth respondent, G.O.Ms. No. 305, dated 10.08.1998, to the effect of counting of service in other schools for seniority cannot be of any advantage to the petitioner. Even the appellate authority, in his order, has admitted that the sixth respondent is senior to the writ petitioner.

19. If the above factors are taken into consideration, it cannot be said that both the writ petitioner and the sixth respondent are equal on merit and ability. On the other hand, the sixth respondent alone is having an edge over the petitioner on merit. Even assuming that both are equal on merit and ability, the sixth respondent, being senior, as stated by the appellate authority and the revisional authority, alone is entitled for preference as per the rules. Neither the School Committee nor the appellate authority has properly assessed the above aspect while passing the order in favour of the petitioner.

20. There is no provision in the rules to give preference to the person, who has more educational qualifications than the qualifications as specified in the rules, that too in unrelated subjects. Therefore, it was incorrect to have not granted promotion to the sixth respondent as Headmaster, who was in the senior grade in seniority. The order of the appellate authority, namely, Joint Director of School Education (HS), second respondent herein, dated 19.05.2004, in which it had been decided that the writ petitioner was more qualified than the sixth respondent and that he was head of the sixth respondent on the basis of merit and ability, in my considered view, is not sustainable. The revisional authority, namely, Government has rightly set aside the proceedings of the appellate

authority and admitted the revision petition of the sixth respondent, which cannot be interfered with by this Court. Further, the prayer of the petitioner to direct the respondents to approve his appointment as Headmaster of the 5th respondent school and pay salary from 12.06.1985 is totally misconceived, the reason being he joined the school only as P.G. Assistant on that day and he was promoted by the School Committee as Headmaster only from 07.11.2003. Since this Writ Petition does not merit consideration, even the appointment of the petitioner as Headmaster from 07.11.2003 will go.

21. A strenuous argument has been made by the learned Senior Counsel for the petitioner that as against the order of the appellate authority, no revision would lie and the said order becomes final. According to him, as per Rule 15(4A), any person employed in the institution specified in column (1) of the Table, aggrieved by an order issued under Sub-rule (4), may prefer an appeal to the authority specified in the corresponding entry in column (2) thereof and in respect of a Higher Secondary School, for the post of Headmaster or Post-Graduate Assistant, Joint Director is the appellate authority and, therefore, the order passed by the appellate authority has become final. He also pointed out that Section 41 provides for an appeal against the orders of the competent authority and any person aggrieved by any order, decision or direction of the competent authority u/s 29 or under any other provision other than Section 34, may prefer an appeal against such order, decision or direction, to such authority or officer as may be prescribed and different such authorities or officers may be prescribed for different classes of private schools and, as such, no revision would lie. He also attempted to read the provision u/s 45, showing the revisional power of the Government.

22. To examine the above contention, it is relevant to extract Section 45, which reads as under:

45.Revision.- (1) The Government may call for and examine the record of any authority or officer prescribed for the purpose of Section 41 in respect of any proceedings to satisfy themselves as to the regularity of such proceeding, or the correctness, legality or propriety of any order made, decision taken or direction issued therein; and, if, in any case, it appears to the Government that any such order, decision or direction should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

(2) No order prejudicial to any person shall be passed under Sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Government may, pending the exercise of their power under Sub-section (1) pass such interlocutory orders as they may deem fit.

23. From the above provision, it is clear that u/s 45, revision would lie before the Government and the Government, being the revisional authority, may call for and examine the record of any authority or officer prescribed for the purpose of Section 41. Such being the position, in this case, the Government has called for

and examined the record of the appellate authority to satisfy themselves as to the regularity of the proceeding or the correctness, legality or propriety of the order made, decision taken or direction issued therein and as it appeared to the Government that the order of the appellate authority should be reversed, the Government passed the order impugned accordingly. So, the power of the Government to examine the order of the appellate authority, which is infirmed with illegality and impropriety, is well founded. The said power is the dominion of the Government and shall be exercisable by it invariably.

24. It is also seen that the appeal u/s 41 is provided in respect of any person aggrieved by an order, decision or direction of the competent authority u/s 29 or under any other provision other than Section 34 of the Act. But, here is an order made under Rule 15 (4) and, therefore, the Government is well within the power to examine the record of the authority below and it is not precluded from examining or calling for any record of any authority or officer prescribed for the purpose of Section 41 also. Hence, the contention of the learned Senior Counsel for the petitioner that there is no revision against the order made under Rule 15(4) has no legs to stand. The revisional power of the Government u/s 45 is wide and the Government is the revisional authority, empowered to call for and examine the record of any authority. Accordingly, in the instant case, after noticing all the circumstances and the relevant rules and provisions in respect of appointment of Headmaster, the Government, after calling for the records and examining the matter in the manner prescribed, reversed the order of the appellate authority, after affording an opportunity to the petitioner to make his representations, as contemplated u/s 45(2), and his objections were also reflected in the order impugned. Therefore, the revisional authority has exercised its jurisdiction by passing the order impugned, setting right the infirmities of the authorities below. As such, the order passed by the first respondent is perfectly in order and the same does not suffer from any infirmity or illegality.

25. However, since the petitioner has been appointed by the School Committee, which appointment is confirmed by the appellate authority, and by virtue of the interim orders, he is continuing in office since the year 2003 till date, as the other persons in seniority have not claimed the post and some of them have retired, I feel it proper, that after the retirement of the sixth respondent, the appointment of the petitioner may be considered by the School Committee, in the event of his seniors not claiming for the post.

26. With the above observation, this Writ Petition is dismissed. No costs.