



W.P.No.9027 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2024

PRONOUNCED ON : 24.10.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.9027 of 2015

and

W.M.P.No.335 of 2016

- 1.A.Annakumar,
B.T. Assistant (Maths),
Government High School,
Jegathabi, Karur District.
- 2.N.Sudha,
B.T.Assistant (Science),
Government Girls Higher Secondary School,
Pugalur, Karur District.
- 3.R.Santhosam,
B.T. Assistant (Tamil),
Government Higher Secondary School,
Jegathabi 639118, Karur District.
- 4.A.Sundararaj,
B.T. Assistant (English),
Government Girls Higher Secondary School,
Pugalur,
Karur District.
- 5.P.Manoharan,
B.T. Assistant (Maths),



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Government High School,
Athur 639 008, Karur District.

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- 6.A.Ramkumar,
B.T. Assistant (Maths),
Government Higher Secondary School,
Thanthonimalai,
Karur District.
- 7.K.Gunasekaran,
B.T. Assistant (Maths),
Government Higher Secondary School,
Palaviduthi,
Karur District.
- 8.N.Sankar,
B.T. Assistant (Maths),
Government Higher Secondary School,
Esanathan,
Karur District.
- 9.S.Ramasamy,
B.T. Assistant (Maths),
Government Girls Higher Secondary School,
Pugulur,
Karur District.
- 10.R.Marayee,
B.T. Assistant (History),
Government Girls Higher Secondary School,
Pugalur,
Karur District.
- 11.M.Karthikeyan,
B.T. Assistant (Maths),
Government Higher Secondary School,
Thammanaikanpatti,



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Karur District.

- 12.D.Jayaraman,
B.T. Assistant (English),
Municipal Higher Secondary School,
Karur and District.
- 13.R.Saravanan,
B.T. Assistant (Science),
Government High School,
Thennilai, Karur District.
- 14.A.Gandhimathi,
B.T. Assistant (Maths),
Government Girls Higher Secondary School,
Vellianai, Karur District.
- 15.K.Kavitha,
B.T. Assistant (English),
Government Higher Secondary School,
Thanthonimalai,
Karur District.
- 16.V.R.Ilanchelian,
B.T. Assistant (Science),
Kumaran Municipal High School,
Karur, Karur District.
- 17.S.K.Sivakumar,
B.T.Assistant (Maths),
Government High School,
Manavadi, Karur District.
- 18.K.Alexsander,
B.T.Assistant (Maths),
Government High Secondary School,
Andipattikottai,



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Karur District.

19.R.Ganesa Moorthi,
B.T. Assistant (Maths),
Government Higher Secondary School,
Esanatham,
Karur District.

20.V.Sivakumar,
B.T. Assistant (Maths),
Government Higher Secondary School,
Neithalur,
Karur District.

21.R.Radha,
B.T. Assistant (Science),
Government High School,
Karuppur,
Peedamangalam (via),
Karur District.

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 600 009.

2.The Director of School Education,
College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Karur District,
Karur.

...Respondents



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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 of the first respondent in relation to the proceedings issued in Letter (Ms)No.129 School Education [PK5(2)] 2013-1 dated 17.07.2013 and quash the same insofar as the petitioners are concerned and issue a consequential direction to the respondents to grant incentive increment for M.Phil degree from the date following the last date of the examination.

For Petitioners : Mr.R.Saseetharan

For Respondents : Mr.M.Rajendiran

Additional Government Pleader

ORDER

The short question that arises for consideration is whether the benefit of second incentive increment for acquiring a M.Phil degree vide G.O(1D)No.18, School Education Department, dated 18.01.2013, would be effective from the date of the said Government Order, i.e., 18.01.2013 or from the date following the last date of examination of the degree.

2. It is submitted by the learned counsel for the petitioners that the petitioners are working as B.T. Assistants (School Assistants) in the Tamil Nadu Education Subordinate Service, i.e., High School service. The following Table



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provides the dates on which appointment of the petitioners were made, qualification acquired and incentive increment granted.

Sl. No.	Name of Teacher	Date of Appointment	Date of M.Phil	Date of incentive increment granted
1.	A.Annakumar, B.T. Assistant (Maths), Government High School, Jegathabi, Karur District.	01.06.2006	April 2010	28.04.2010
2.	N.Sudha, B.T.Assistant (Science), Government Girls Higher Secondary School, Pugalur, Karur District.	17.03.2007	June 2008	24.08.2008
3.	R.Santhosam, B.T. Assistant (Tamil), Government Higher Secondary School, Jegathabi, Karur District.	04.10.2007	December 2005	04.10.2007
4.	A.Sundararaj, B.T. Assistant (English), Government Girls Higher Secondary School, Pugalur, Karur District.	07.03.2007	November 2007	30.01.2009
5.	P.Manoharan, B.T. Assistant (Maths), Government High School, Athur 639 008, Karur District.	01.06.2006	March 2002	01.01.2007
6.	A.Ramkumar, B.T. Assistant (Maths), Government Higher	01.06.2006	May 2009	26.05.2009



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	Secondary School, Thanthonimalai, Karur District.			
7.	K.Gunasekaran, B.T. Assistant (Maths), Government Higher Secondary School, Palaviduthi, Karur District.	01.06.2006	May 2009	30.05.2009
8.	N.Sankar, B.T. Assistant (Maths), Government Higher Secondary School, Esanathan, Karur District.	01.06.2006	May 2009	26.05.2009
9.	S.Ramasamy, B.T. Assistant (Maths), Government Girls Higher Secondary School, Pugulur, Karur District.	01.06.2006	May 2009	30.05.2009
10.	R.Marayee, B.T. Assistant (History), Government Girls Higher Secondary School, Pugalur, Karur District.	19.07.2002	December 1986	01.01.2006
11.	M.Karthikeyan, B.T. Assistant (Maths), Government Higher Secondary School, Thammanaikanpatti, Karur District.	01.01.2006	November 2009	28.04.2010
12.	D.Jayaraman, B.T. Assistant (English), Municipal Higher Secondary School, Karur and District.	28.02.2006	May 2008	16.06.2008



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13.	R.Saravanan, B.T. Assistant (Science), Government High School, Thennilai (Kadavoor), Karur District.	01.06.2006	June 2007	01.10.2007
14.	A.Gandhimathi, B.T. Assistant (Maths), Government Girls Higher Secondary School, Vellianai, Karur District.	14.02.2003	June 2007	01.10.2007
15.	K.Kavitha, B.T.Assistant (English), Government Higher Secondary School, Thanthonimalai, Karur District.	01.06.2006	August 2009	31.08.2009
16.	V.R.Ilanchelian, B.T.Assistant (Science), Kumaran Municipal High School, Karur, Karur District.	01.06.2006	August 2005	01.01.2007
17.	S.K.Sivakumar, B.T.Assistant (Maths), Government High School, Manavadi, Karur District.	01.06.2006	May 2009	27.05.2009
18.	K.Alexsander, B.T.Assistant (Maths), Government High Secondary School, Andipattikottai, Karur District.	19.06.2002	December 2008	02.01.2009
19.	R.Ganesa Moorthi, B.T. Assistant (Maths), Government Higher Secondary School,	01.06.2006	December 2008	26.05.2009



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	Esanatham, Karur District.			
20.	V.Sivakumar, B.T. Assistant (Maths), Government Higher Secondary School, Neithalur, Karur District.	09.07.2004	November 2009	06.11.2009
21.	R.Radha, B.T. Assistant (Science), Government High School, Karuppur, Peedamangalam (via), Karur District.	01.06.2006	March 2008	01.04.2008

3. The present Writ Petition has been filed against the letter of the Government dated 17.07.2013, whereby, it was clarified that B.T. Assistants are entitled for second incentive increment for M.Ed., or M.Phil., or Ph.D., in terms of G.O(1D)No.18, School Education Department from the date of issuance of the said Government Order, i.e., 18.01.2013.

4. The learned counsel for the petitioners would submit that all the 21 petitioners were granted incentive increment for M.Phil., from the day following the last day of the examination and they have been drawing pay accordingly, on the premise that G.O(1D)No.18 dated 18.01.2013, substituted



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M.Ed., with M.Ed., or M.Phil., or Ph.D., as extending the benefit to teachers, who had acquired M.Phil., or Ph.D., on the day following the last day of the examination of the degree. With a view to promote the efficiency of teachers, the State of Tamil Nadu had been extending the benefit of incentive increment for acquiring higher qualification periodically commencing with G.O.Ms.No.42 dated 10.01.1969. The above said Government Order did not impose any limitation as to the number of incentive increments, which a teacher would be entitled to, for acquiring higher qualification. Thereafter, the Government of Tamil Nadu issued G.O.Ms.No.740 dated 30.06.1989, whereby, it was provided that a secondary grade teacher is entitled for incentive increment for the third time as well. The Government thereafter with a view to impose a ceiling on the number of incentive increments, issued two orders, viz., G.O.Ms.Nos.1023 and 1024 dated 09.12.1993, whereby, it was provided that the maximum number of “advance increments” which a teacher can get under the scheme of “incentive increment” under the Government Order shall be four in his entire service. In other words, a teacher is entitled for “incentive increment” only twice.

5. It is relevant to note that while granting incentive increment for higher qualification, M.Phil., and Ph.D., were not expressly included. Instead, the



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Government Orders, which granted the incentive increment, only included M.Ed., degree. With a view to remove the above anomaly and apparently on the basis of the representations being made, the Government came up with G.O(1D)No.18, School Education Department, dated 18.01.2013, which provided that B.T. Assistants are entitled for incentive increments for second time for M.Phil., or Ph.D., degree. In other words, the expression “M.Ed.,” vide G.O(1D)No.18 dated 18.01.2013, stood substituted with “M.Ed./M.Phil/Ph.D. It is submitted that the petitioners have been drawing a pay including the incentive increment from the day following the last date of the examination, which in their view is in terms of Fundamental Rule 26, which provides that a Government servant would be entitled for incentive increment from the day following the last day of the examination of the degree and that a Government servant is deemed to have acquired a degree from the day following the last day of the examination which he has passed. However, the Government issued Letter No.129 dated 17.07.2013, purported to be a clarification, provided that the second incentive increment for M.Ed./M.Phil./Ph.D., would be from the date of issuance of G.O(1D)No.18, i.e., 18.01.2013. Thus, the petitioners are now faced with recovery proceedings, inasmuch as the audit has objected on the premise that incentive increments cannot be granted from 01.06.2006, i.e.,



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the day following the last day of examination of the degree, but only from 18.01.2023, i.e., the date of issuance of G.O.(1D)No.18.

6. Against this background, the question that arises for consideration is whether the second incentive increment, which is granted to the petitioners for acquiring M.Phil., or Ph.D., degree, ought to be understood as being available only from the date of the Government Order or it must be understood as conferring the benefit of incentive increment from the date following the last day of the examination, which he has passed.

7. The learned counsel for the petitioners would submit that the impugned clarification letter dated 17.07.2013 is arbitrary, illegal and distorts/defeats the entire scheme of granting the benefit of incentive increments, which is to improve the efficiency of the teachers. Initially, B.T. Assistants were extended incentive increment for acquiring M.Ed., degree. The Government Order in G.O.(1D)No.18 dated 18.01.2013 provided that presently Universities have stopped offering M.Ed., course in correspondence. However, the teachers are acquiring higher qualification of M.Phil., or Ph.D., from Open Universities and therefore, on considering the long standing request of B.T.



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Assistants, in addition to the incentive increment for acquiring M.A./M.Sc, it is ordered that they would also be entitled for second incentive increment not only for M.Ed., but also for M.Phil., or Ph.D. The relevant portion of the Government Order is extracted hereunder:

“3. பள்ளிக் கல்வி இயக்குநரின் பரிந்துரை அரசால் கவனமுடன் ஆய்வு செய்யப்பட்டு அதனை ஏற்று, பட்டதாரி ஆசிரியர்கள் உயர் கல்வி தகுதியான எம்.ஏ., எம்.எஸ்.சி.,-க்கு பெறும் முதல் ஊக்க ஊதிய உயர்வை தவிர, மேலும் இரண்டாவது ஊக்க ஊதிய உயர்வு பெற அரசாணை எண்.1024, கல்வி, அறிவியல் மற்றும் தொழில் நுட்பத் துறை, நாள் 9.12.1993-ன் படி அனுமதிக்கப்பட்ட தகுதியான உயர்கல்வி எம்.எட்., என்பதற்கு பதிலாக, எம்.எட்., அல்லது எம்.பில்., அல்லது பி.ஹெச்.டி., பட்டம் பெற்றிருந்தால் இரண்டாவது ஊக்க ஊதிய உயர்விற்கான உயர்கல்வித் தகுதியாக கருதி, அதாவது ஒரு ஆசிரியரின் மொத்தப் பணிக் காலத்தில் அதிகப் பட்சமாக இரு ஊக்க ஊதிய உயர்வுகளே அனுமதிக்கப்பட வேண்டும் என்கின்ற நிபந்தனைகளுக் -குட்பட்டு இரண்டாவது ஊதிய உயர்வு அளிக்கலாம் என முடிவு எடுத்து அவ்வாறே அரசு ஆணை வெளியிடுகிறது.”

8. Rule 26 of the Fundamental Rules of the Government of Tamil Nadu, was sought to be relied upon by the learned counsel for the petitioners in support of his contentions that the petitioners would be entitled to incentive increment from the day following the last day of the examination. The relevant portion of Rule 26 of the Fundamental Rules of the Government of Tamil Nadu



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is extracted hereunder:

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“(2) In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed”.

9. It may now be relevant to refer to the impugned letter dated 17.07.2013, whereby, it was clarified that the benefit would be available with effect from the date of issuance of G.O(1D)No.18, dated 18.01.2013. The relevant portion of the G.O. is extracted hereunder:

"பள்ளிக் கல்வி இயக்குநர் கேட்டுக் கொண்டதற்கிணங்க அரசாணை (1டி) எண்.18, பள்ளிக் கல்வி (இ2) துறை, நாள்: 18.01.2013-க்கு கீழ்க்கண்டவாறு தெளிவுரை வழங்கப்படுகிறது:-

“அரசாணை (1டி) எண்.18, பள்ளிக் கல்வி (இ2) துறை, நாள்: 18.01.2013-ன்படி, பட்டதாரி ஆசிரியர்கள் எம்.எட்., அல்லது எம்.பில்., அல்லது பி.எச்.டி., பட்டம் பெற்றிருந்தால் இரண்டாவது ஊக்க ஊதிய உயர்வு பெறுவதற்கான உயர்கல்வி தகுதியாக கருதி, அதாவது ஒரு ஆசிரியரின் மொத்தப் பணிக் காலத்தில் அதிகப் பட்சமாக இரு ஊக்க ஊதிய உயர்வுகளே அனுமதிக்கவேண்டும் என்ற அடிப்படையில் இரண்டாவது ஊக்க ஊதிய உயர்வு, இவ்வாணை வெளியிடப்பட்ட நாள் முதல், அதாவது 18.01.2013 முதல் வழங்கலாம்.””



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10. It is submitted by the learned counsel for the petitioners that the above letter results in curtailing the benefit extended by way of G.O(1D)No.18 dated 18.01.2023, only from the date of the said G.O. instead from the day following the last day of the examination is wholly without jurisdiction. It is further submitted that once the G.O. extends / confers a benefit, it may not be open for the Government to abridge the said benefit through a letter. It was thus submitted that the impugned letter and the recovery proceedings are unsustainable.

11. To the contrary, it is submitted by the learned Additional Government Pleader appearing for the respondents by placing reliance upon the counter, that a close reading of the above G.O(1D)No.18 would show that the intent of the Government is only to extend the benefit of incentive increment with effect from 18.01.2013. The impugned letter was only clarifying the intent of the Government.

12. Heard the submissions made on both sides and perused the materials



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available on record.

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13. Before proceeding further, it may be relevant to refer to paragraph 5 of the counter filed by the third respondent, wherein, the reason behind extending the benefit of incentive increment not only to the teachers, who have acquired M.Ed., degree, but also to those who had acquired M.Phil., or Ph.D., degree, has been explained. The relevant portion is extracted hereunder:

“5. I submit that a B.T. Teacher should have the qualification of B.A. Or B.Sc., Degree coupled with a B.Ed., degree for his appointment. Suppose if a B.T. Teacher has acquired the qualification of M.A., M.Ed., then he would be granted the first incentive increment for his M.A., Degree and Second incentive increment for his Initially the M.Ed., degree. Initially the M.Ed., qualification is the yardstick for the second increment for a B.T. Teacher. In order to curtail the above anomaly the G.O.Ms.No.18 dated 18.01.2013 was passed by the Government whereby the M.Phil., qualification is considered on par with M.Ed., qualification. As per the above G.O the eligibility qualification of getting the second incentive increment for B.T assistant is M.Ed., or M.Phil., or Ph.D. In fine a teacher would be entitled for only two incentive increment alone in his entire carrier for his acquired higher qualification.”



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14. From a reading of the above counter as well as the portion of the Government Order, wherein, it has been set out that the benefit of incentive increment to M.Phil., and Ph.D., was being made in consideration of the long pending demand/request, would indicate that the above G.O. itself was to remove an anomaly and clarificatory. That being the case, there is merit in the submission of the learned counsel for the petitioners that the restriction of the benefit only from the date of issuance of G.O(1D)No.18 dated 18.01.2013 instead of from the day following the last day of examination may not be valid.

15. Yet another reason why the impugned letter is illegal is also in view of the fact that any attempt at curtailing the benefit conferred by G.O(1D)No.18 by granting the same only from the date of the said G.O and not from the day following the last day of passing examination which entitles the candidate to benefit of increment would be contrary to Rule 26 of the Fundamental Rules of the Government of Tamil Nadu, which as seen supra provides in cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed.

16. It is trite law that a benefit conferred by a Government Order cannot



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be curtailed / whittled down / impaired by a letter. In view thereof the impugned letter dated 17.07.2023, insofar as it curtails the benefit of second incentive only from the date of the above G.O. instead of granting the benefit from the day following the last day of the examination in terms of Rule 26 of the Fundamental Rules of the Government of Tamil Nadu is thus set aside. In view thereof, the recovery proceeding also cannot be sustained and consequently set aside.

17. Accordingly, the impugned letter dated 17.07.2013 is set aside and the Writ Petition stands disposed of on the basis of the above observations. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

24.10.2024

Index : Yes / No
Internet : Yes/ No
Lm

To:

1.The Government of Tamil Nadu,
Represented by Secretary to Government,



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School Education Department,
Fort St.George,
Chennai – 600 009.

2.The Director of School Education,
College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Karur District,
Karur.



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MOHAMMED SHAFFIQ, J.

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