

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.12.2016****CORAM:****THE HON'BLE MR.JUSTICE M.V.MURALIDARAN****W.P.(MD)No.16453 of 2013**

D.Ramakrishnan

... Petitioner

Vs.

- 1.The Director of School Education,
Chennai-6.
- 2.The Chief Educational Officer,
Sivagangai.
- 3.The District Educational Officer,
Sivagangai.
- 4.The Headmaster,
Government Higher Secondary School,
Thiruppasethi,
Sivagangai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent in his proceedings in Na.Ka.No.223/2010 dated 20.08.2013 and quash the same and direct the respondent to sanction 1 set of incentive increment for M.Ed., to the petitioner and confer all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.K.Guru (for R1 to R3)

Government Advocate

ORDER

This writ petition has been filed by the petitioner for the issuance of writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent in his proceedings in Na.Ka.No.233/2010 dated 20.08.2013 and quash the same and direct the respondent to sanction 1 set of incentive increment for M.Ed., to the petitioner and confer all the consequential benefits.

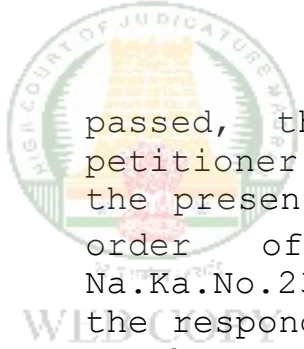


2.The case of the petitioner is that he has joined as a Secondary Grade Teacher on 24.03.1982 in the Education Department of the School. After joined in the school, he has completed the B.A.(History) in the year 1983 and B.Ed., course in the year 1985. Pursuant to his acquirement of qualification of B.A., B.Ed., the respondents have sanctioned one set of incentive increment. Pursuant to the above, the petitioner also passed M.A., in the year 1988, thereafter, the respondents granted another set of incentive increment for M.A., qualification in the year 1988, subsequently, the petitioner has passed M.Ed., in the year 1992 and in the meantime, he was promoted to B.T. Assistant on 10.09.2002 and reached superannuation on 30.06.2010. Then, the petitioner was relieved from the service on 30.05.2011, on completion of the re-employment period.

3.After obtaining the M.Ed., qualification, the petitioner has applied for third incentive increment for acquiring higher qualification of M.Ed., and the petitioner is entitled for incentive increment for higher qualification of M.Ed., and the Government issued order in G.O.(1d) No.198 School Education (M2) Department dated 04.07.2011 granting third incentive increment to one Mr.K.Elumalai, who obtained the M.Ed., qualification. In fact, the said Government has issued the said order in compliance of order passed by this Court and hence the petitioner stated that the respondent should not deny the third incentive increment to the petitioner for M.Ed. Qualification. But, the fourth respondent without considering the same, since the respondent has passed the present impugned order in Na.Ka.No.223/2010 dated 20.08.2013, rejecting his claim stating that the petitioner has already received two sets of incentive increment. Therefore, he is not eligible for 3rd incentive increment and hence he rejected the request of the petitioner by way of the impugned order.

4.The petitioner also come forward by saying that pursuant to the order passed by this Court in the Writ Appeal in WA.No.1203 of 2008, the fourth respondent has granted the 3rd incentive to the said persons by namely Mr.K.Elumalai, the 3rd incentive also given from the date of his promotion as a Tamil Teacher from 01.08.1996. Therefore, the petitioner states that complying the very same, the petitioner should have granted the 3rd incentive for the qualification of M.Ed., but, without noting the same, the fourth respondent has rejected the petitioner's request.

5.The petitioner also states that the fourth respondent / Headmaster had simply stated that only in respect of Tamil Teacher Mr.Elumalai, the said G.O.Ms.No.1023, dated 09.12.1993 has been



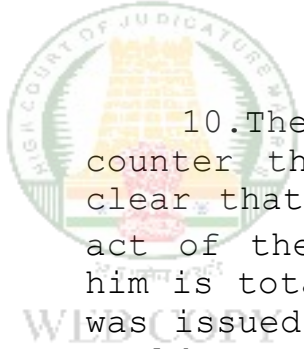
passed, therefore the said G.O. was not applicable to this petitioner. Challenging the said order, the petitioner has filed the present writ petition to call for the records relating to the order of the 4th respondent in his proceedings in Na.Ka.No.233/2010 dated 20.08.2013 and quash the same and direct the respondent to sanction 1 set of incentive increment for M.Ed., to the petitioner and confer all the consequential benefits.

6. On behalf of the 4th respondent, a counter affidavit has been filed in which the 4th respondent has denied all the allegations set out by the petitioner in the affidavit. The 4th respondent states that counter filed on behalf of other respondents 1 to 3.

7. The 4th respondent states that originally this petitioner has joined the service on 24.03.1982 as Secondary Grade Teacher and while he was in service, he had passed B.A. (History) in the year 1983 and B.Ed. in the year 1988. Though the Government with a view to encourage the teachers working in various categories i.e. Secondary Grade Assistant, B.T. Assistant and P.G. Assistant has allowed two incentives (4 increments) for their acquired higher qualification in service, accordingly, the first incentive was sanctioned to the petitioner's qualification viz., B.A., B.Ed., Degree on 26.04.1985.

8. The fourth respondent also states that thereafter the petitioner was sanctioned second incentive from 28.05.1988 for his M.A., Degree. In fine, the petitioner had been sanctioned two incentives for his above higher qualification. Therefore, this petitioner has not eligible for 3 incentives.

9. The fourth respondent further states that as per the Government letter No.22536/34-1 dated 22.09.1984 the prior permission should be obtained from the Government for studying as well as acquiring the M.Ed., qualification. But, this petitioner it appears that the petitioner is not at all got any prior permission from the Government for his acquired qualification of M.Ed., degree. Apart from this, the fourth respondent also states that there was no entries were found in the service register of the petitioner for his acquired qualification of M.Ed., Degree and the petitioner's qualification of M.Ed., degree was not at all entered in the service register then he could not legally as well as morally not to claim the 3rd incentive for his M.Ed. degree and he is not eligible for the same.



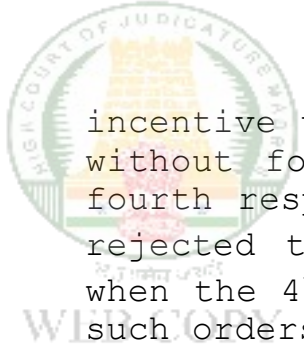
10. The fourth respondent come forward by saying that in his counter that when the Government Order and regulations is very clear that a teacher would be eligible for only two incentives, the act of the petitioner that the 3rd incentive should be given to him is totally an unjustifiable stand. Since, the G.O.(1d) No.198 was issued only in respect of one Mr.K.Elumalai and the said G.O. would not be applicable to any other persons, therefore, this petitioner has not been eligible for the 3rd incentive for the acquirement of M.Ed. Qualification. Therefore, the claim of the petitioner for 3rd incentive is totally illegal and unwarranted and the fourth respondent vide his impugned proceedings in Na.Ka.No.223/2010 dated 20.08.2013 had rejected his claim. Though the petitioner very well knows the granting of 3rd incentive is totally not practical, yet his act of filing this present writ petition would show he wants Government money in unjust enrichment. Therefore, the fourth respondent states that this writ petitioner has filed this writ petition without properly understanding the crux of the issue and hence, the fourth respondent sought for dismissal of the writ petition.

11. The respondents 1 to 3 have not filed any counter, but the 4th respondent states that he has filed the counter on behalf of other respondents 1 to 3 also.

12. Heard Mr.V.Panneer Selvam, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 to 4.

13. Admittedly, the petitioner has required M.Ed. qualification, the order of rejection passed by the Headmaster of the said school, where the petitioner was working, is order challenge in the writ petition. But, I do not understand that how under what provision of law or what rights the fourth respondent/Headmaster has passed this order of rejection of the petitioner for 3rd incentive since he has not competent authority, and he also not the appointing authority.

14. The appointing authority and the other respondents having power to decide whether the petitioner have eligible for 3rd incentive or not. I am also seen that how the 4th respondent has passed the impugned order and how he filed the counter on behalf of the other respondents 1 to 3, since the respondents 1 to 3 alone having power for appointing the petitioner. It is normal practice that the fourth respondent/ Headmaster having power to forwarding the request made by the petitioner for granting 3rd



incentive to the other respondents namely respondents 1 to 3. But without forwarding the said request made by the petitioner, the fourth respondent, who is the Headmaster of the School had simply rejected the petitioner's request for granting of 3rd incentive, when the 4th respondent is not at all the competent person to pass such orders.

15. Whether the respondents 1 to 3 or the fourth respondent have applied their mind in proper manner in rejecting the request of the petitioner, the Government of Tamil Nadu though their Secretary has passed the G.O.(1d)No.198 dated 04.07.2011. Pursuant to the order passed in W.A.No.1203 of 2008 by the Hon'ble Division Bench of this Court, the said G.O. has been passed by recognizing the 3rd incentive.

16. While, the Hon'ble Division Bench of this Court passed the order in W.A.No.1203 of 2008 dated 09.12.2009, this Court has passed the order stating that as per the G.O.Ms.No.42, dated 10.01.1969 with an intention that a teacher is eligible for four advance increments only in total for passing higher qualifications, however, the said G.O. was came to be modified and clarified by the Government in its consequent G.O.Ms.No.746, dated 30.06.1989 based on the orders of this Court in W.P.No.5191 of 1986, granting 5th and 6th increments also to the similarly placed persons, who have already acquired qualification prior to the date of issue of the order i.e. 09.02.1993. The order passed by the Hon'ble Division Bench of this Court is as follows:

"7. Mr. T. Sellapandian, learned counsel appearing for the appellant would submit that though the learned single Judge has rightly set aside the recovery, however, miserably rejected the re-fixation of pay from 1.8.1996 and subsequent increments, on the ground that the Tamil Nadu Administrative Tribunal restricted the relief only with reference to the recovery alone and not having agitated the same, the appellant cannot now review the same cause of action and insist upon the re-fixation. The learned counsel would contend that this is factually incorrect, stating that the issue before the Tribunal was only with reference to the recovery and the question of sanction of incentive increments for the higher qualification does not arise at all and further, the appellant never suffered with any adverse order from the Tribunal and in fact, the Tribunal allowed the Original Application and therefore, the learned Judge ought to have allowed the re-fixation of pay and consequential sanction of increments. The learned counsel would further contend that though the intention in G.O.Ms.No.42, dated 10.1.1969 is that a



its consequent G.O.Ms.No.746, dated 30.6.1989 based on the orders of this Court in W.P.No.5191 of 1986, granting 5th and 6th increments also to the similarly placed persons who have already acquired qualification prior to the date of issue of the order, i.e. 9.2.1993. Therefore, the learned counsel would contend that admittedly, the appellant has acquired M.Ed. qualification in May, 1993 i.e. prior to the date of issue of G.O.Ms.No.1023, dated 9.12.1993 and accordingly, two sets of increments, i.e. 5th and 6th increments were rightly sanctioned to the appellant, which, however, later was sought to be recovered, which was set right by the Tribunal in its order, dated 18.11.2003 in O.A.No.5066 of 1998. Therefore, once the learned single Judge, having accepted the case of the appellant for grant of 5th and 6th increments, however, rejecting the re-fixation of pay is not legally sustainable and it is liable to be set aside.

8. On the other hand, Mr.S.Nagararatnam, learned Government Advocate (Education) would contend that in fact, G.O.Ms.No.1023 and 1024, dated 9.12.1993, it has been specifically been ordered that a Secondary Grade Teacher possessing B.Ed. and M.A., or M.Sc., qualification, is entitled to two sets of incentive increments, i.e. 1 to 4 increments and when he possesses M.Ed. qualification after his promotion as B.T.Assistant, he is eligible for another set of incentive increments, i.e. 5th and 6th increments, that too prior to 9.12.1993 only. It is further contended that in G.O.Ms.No.1023, dated 9.12.1993, it has been clearly clarified that a teacher in his entire period of service, he should be sanctioned the maximum number of advance increments is four only and in any circumstances, this ceiling should not be exceeded. Relying upon this, the learned Government Advocate would submit that for possessing M.Ed. qualification, the appellant was granted 5th and 6th increments though it is prior to due date, i.e. 9.12.1993, it is to be noted that he acquired the qualification in the cadre of Secondary Grade Teacher and not in the cadre of B.T.Assistant and in fact, he was promoted as Tamil Pandit from 1.8.1996 only and therefore, the orders contemplated in the above said G.Os. could not be applied on his behalf. It is further contended that as per the orders contemplated in G.O.Ms.No.745, dated 4.6.1990, the sanction of advance increment for training qualification is dispensed with, with effect from 30.6.1989 and no orders of the Government is available for the sanction of such advance increment after that date. Since the advance increment for B.Ed.



Training qualification sanctioned after the crucial date needs recovery, the same was pointed out by the Accounts Officer (Audit), Coimbatore at the time of audit of accounts of the fourth respondent school and it is quite in order and therefore, the orders passed by the learned single Judge in W.P.No.1348 of 2008 are legally sustainable and no interference is required. With these contentions, the learned Government Advocate sought for dismissal of the Writ Appeal."

17. This Court also passed an order stating that the teachers have not eligible for 5th and 6th increments since in G.O.Ms.No.1023, dated 09.12.1993, the Government has categorically fixed the ceiling that the maximum admissible increments for higher qualifications is four only and further, though the appellant acquired M.Ed. qualification prior to 09.12.1993, and he is not eligible for the 5th and 6th increments and he is eligible for 2nd and 3rd increments. The writ appeal was allowed and passed the following orders:

"10. It is to be noted that in all, the appellant was sanctioned 3 sets of increments for possessing higher qualifications. According to the respondents, the appellant is not entitled to 5th and 6th increments since in G.O.Ms.No.1023, dated 9.12.1993, the Government has categorically fixed the ceiling that the maximum admissible increments for higher qualifications is four only and further, though the appellant acquired M.Ed qualification prior to 9.12.1993, he is not entitled to 5th and 6th increments since admittedly he acquired the said qualification in the cadre of Secondary Grade Teacher and not in the cadre of B.T.Assistant.

11. We have carefully gone through the order of the learned single Judge, who dealt with the matter regarding entitlement of 5th and 6th increments in a perspective manner and categorically held that the appellant is entitled to 5th and 6th increments for possessing higher qualification of M.Ed. stating that the persons similarly placed like appellant cannot be put at a disadvantage while declining the increments merely on the ground that they obtained such higher qualification while they were working as Secondary Grade Teachers. However, the learned Judge has rejected the relief of re-fixation of pay from 1.8.1996 and subsequent increments stating that the appellant preferred the writ petition aggrieved by the order of the Tribunal, where the Tribunal has restricted the relief only with regard to recovery alone and not



having agitated the same, the appellant cannot revive the same cause of action and insist upon the sanction of those increments which was denied to him by the Tribunal. This view of the learned single Judge, in our opinion cannot be sustained for the reason that undoubtedly, the learned Judge set aside the recovery by holding that the appellant is entitled to 5th and 6th increments and when such being the situation, as rightly contended by the learned counsel for the appellant, he is entitled to re-fixation and subsequent increments. It is to be noted that the learned single Judge has ultimately upheld the scheme of the Government fixing the maximum increments for possessing higher qualifications is four only, which, in our opinion also should be confirmed. As far as the appellant is concerned, his case is squarely covered by the G.O.Ms.No.1023, dated 9.12.1993 as the appellant has acquired M.Ed qualification in May, 1993 i.e. prior to the date of issue of G.O.Ms.No.1023, dated 9.12.1993 and accordingly, he is entitled to two sets of increments, i.e. 5th and 6th increments and consequently, based on this, re-fixation of pay as well as consequent increments."

18.Pursuant to the above order passed by the Hon'ble Division Bench of this Court in WP(MD)No.19065 of 2013 has passed an order setting aside the impugned order dated 10.10.2013 in the said writ petition and directing the respondents to grant 3rd incentive to the petitioner in the said writ petition.

19.In the said writ petition, this Court has passed the order in WP.(MD)Nos.11802 to 11806 of 2013 dated 24.07.2013 and in the said writ petition the following order has been passed:

"14.Perusal of the Government Order in G.O.(2D)No.15, School Education Department, dated 28.03.2013 shows that the Government, accepting the order made in W.P.(md).No.9200 of 2011, dated 12.04.2011, have sanctioned the third incentive increment to Mrs.K.Latha Devi, a Post Graduate Assistant, from the date on which she acquired the higher qualification. This Order has been issued with the concurrence of the Finance Department in A.SA.No.8499/Education-11/13, dated 28.02.2013. Thus, from the line of judgments stated supra, the issue as to whether teachers are entitled to third incentive increment for acquiring higher qualification, is no longer *res integra*.

15.When the Government have implemented the orders of this Court, declaring entitlement of a teacher to third



incentive increment for acquiring higher educational qualification and also issued appropriate orders, directing sanction of advance increments from the date of acquiring higher educational qualification, it is the duty on the part of the District Educational Officer, Madurai Educational District, Tallakulam, Madurai, to have addressed the issue, as to whether the petitioners who are all M.Phil degree holders, are entitled to the sanction of the third incentive increment on the merits of the individual case, and pass orders. Merely because, G.O.(1D)No.209, School Education Department dated 08.07.2010 was issued by way of implementation of orders made in W.A.No.426 of 2008, dated 27.06.2008, the District Educational Officer, Madurai District ought not to have returned the proposals dated 22.09.2010, sent by the Correspondent, Sourashtra Higher Secondary School, Madurai District. A duty is cast upon the said authority, to address the entitlement of the petitioners, for third incentive increment for M.Phil degree.

19.As rightly contended by Mr.Arul Vadivel @ Sekar, learned counsel for the petitioners, there is failure on the part of the District Educational Officer, Tallakulam, Madurai Educational District, Madurai to examine and consider the entitlement of the petitioners for third incentive increment, for acquiring M.Phil qualification. Therefore, while setting aside the impugned order in the present writ petitions, this Court, hereby directs the Correspondent, Sourashtra Higher Secondary School, Madurai District to resubmit the proposals to the District Educational Officer, Tallakulam, Madurai Educational District, Madurai / third respondent herein, along with all the service particulars and testimonials within 10 days from the date of receipt of a copy of this order and on receipt of such proposals, the District Educational Officer, Madurai Educational District, Tallakulam, Madurai District is directed to consider the proposals in the light of the decisions of this Court extracted above and the Government Orders cited supra and pass suitable orders, within a period of four weeks from the date of receipt of proposals from the fourth respondent.

20.Before parting with this case, this Court deems it fit to record, that once an issue has been finally decided by this Court and the decision rendered by this Court has been implemented by the Government in passing several G.Os, it is incumbent on the part of the authorities, to apply the judgment, to the similarly situated persons, whenever a similar claim is made, subject to verification of the service particulars of the claimant and address the issue of entitlement.



This is, of course, subject to the government rules, issued from time to time. An issue which reached finality, has to be treated as "judgment in rem". It cannot be contended by the respondents as it is 'judgment in personam'."

The aforementioned decision has been followed in W.P.Nos.34618 to 34621 of 2013 dated 19.12.2013 and W.P.Nos.22296 to 22298 of 2014 dated 19.08.2014.

5. In the light of the aforementioned decisions, the writ petition is allowed, and a direction is issued to the respondents to sanction third incentive increment to the petitioner for having acquired higher qualification of M.Phil., degree, within a period of six weeks from the date of receipt of a copy of this order. No costs."

Therefore, this Court passed order in WP(MD)Nos.11802 to 11806 of 2013 dated 24.07.2013 is squarely applicable to this petitioner's case also.

20. Therefore, I am of the considered opinion that this petitioner, who has completed his M.Ed. qualification in the year 1992 i.e. prior to G.O.Ms.No.1023, dated 09.12.1993 and accordingly the petitioner is eligible for 3rd increment, since the Government has categorically fixed the ceiling that the maximum admissible increments for higher qualification is four only and though the teacher is not entitled for 5th and 6th increments. Accordingly, the petitioner is eligible for 3rd increment as per the above G.O.Ms.No.1023, dated 09.12.1993 and also as per G.O.(1d)No.198 dated 04.07.2011 and the order's passed in the above writ appeal and writ petition, this petitioner is fully eligible for the 3rd increment and hence, this Court is inclined to set aside the impugned order dated 20.08.2013.

21. In the result,:

(a) the writ petition is allowed, by setting aside the impugned order passed in Na.Ka.No.223/2010, dated 20.08.2013 by the 4th respondent;

(b) the respondents 1 to 4 are hereby directed to grant the 3rd incentive increments to the petitioner for the qualification of M.Ed degree from the date of acquirement of M.Ed degree from the year 1993 and pay back all service benefits to the petitioner; and

(c) the said exercise shall be done by the respondents within a period of four weeks from the date of receipt of a copy of this order.



22. Accordingly, the writ petition is allowed, by setting aside the order in Na.Ka.No.223/2010, dated 20.08.2013 passed by the 4th respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

vsa

To

1. The Director of School Education, Chennai-6.
2. The Chief Educational Officer, Sivagangai.
3. The District Educational Officer, Sivagangai.

+1cc to Mr.V.Panner Selvam, Advocate Sr.No. 79182

+1cc to Spl.Government Pleader Sr.No. 79037

jAM/05.01.2017/SS 3/SAR 1/11p-6c

W.P. (MD) No.16453 of 2013

01.12.2016