



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.19065 of 2013

R.J.A.Vijayakumar

... Petitioner

vs.

1)The Secretary to Government,
School Education,
Fort St.George,
Chennai-9.

2)The Director of School Education,
College Road, Chennai-6.

3)The District Educational Officer,
Melur Educational District,
Melur, Madurai District.

4)The Headmaster,
Government Higher Secondary School,
Uranganpatti, Melur Taluk,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 4th respondent in O.Mu.No.110/2013 dated 10.10.2013 and quash the same as illegal and consequently direct the respondents to sanction 3rd incentive increment for possessing M.Phil to the petitioner in the light of the orders of this Hon'ble Court in W.P.(MD)No.2528/2007, W.P.No.9200/2011, W.P.(MD)Nos.7291/2013 batch, W.P.(MD) Nos.11802/2013 and batch and in the light of G.O.Ms.No.17 School Education Department dated 08.01.2008, G.O.Ms.No.209, School Education Department dated 08.07.2010 and G.O.(2D)No.15 School Education Department dated 28.03.2013.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar

For Respondents : Mr.Aayiram K.Selvakumar,
Government Advocate

ORDER

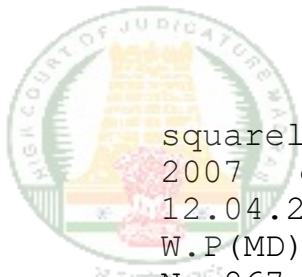


a Writ of Certiorarified Mandamus, calling for the Records pertaining to the order passed by the 4th respondent in O.Mu.No.110/2013 dated 10.10.2013 to quash the same with a further direction to the respondents to sanction 3rd incentive increment to the petitioner for possessing M.Phil qualification in the light of the orders of this Court in W.P.(MD)No.2528/2007, W.P.No.9200/2011, W.P.(MD)Nos.7291/2013 batch, W.P.(MD)Nos.11802/2013 and batch and in the light of G.O.Ms.No.17, School Education Department, dated 08.01.2008, G.O.Ms.No.209, School Education Department, dated 08.07.2010 and G.O(2D)No.15, School Education Department, dated 28.03.2013.

2.The petitioner was appointed as a Physical Education Teacher in the 4th respondent school on 30.06.1988 with the qualification of B.Sc., B.P.Ed. His services were also regularised on 30.06.1988. Subsequently, he was promoted as Graduate Teacher(B.T. Assistant) on 25.10.2000. Thereafter, he has acquired M.A(History) in May 1990 and M.Phil(English) in June 2009. In this background, the claim of the petitioner is, while he was granted first advance incentive increment on 25.06.1992 for passing M.P.Ed degree and second advance incentive increment on 25.10.2000 for passing M.A(History), the respondents have not come forward to grant 3rd incentive increment for having acquired M.Phil qualification in June 2009. Therefore, he has sent a representation dated 07.10.2013 to the 4th respondent school to sanction 3rd incentive increment for possessing M.Phil (English) qualification, but the same was rejected by the impugned order dated 10.10.2013 of the 4th respondent citing G.O.No.1024, Education, Science and Technology Department, dated 13.12.2009. Hence, the petitioner has come to this Court with the present writ petition.

3.Mr.C.Arul Vadivel Alias Sekar, learned counsel for the petitioner by producing an order dated 17.10.2014 in W.P(MD)No.17022 of 2014 submitted that in identical circumstances, this Court while setting aside impugned order therein, declining to grant third incentive increment for possessing M.Phil qualification, has granted a direction to sanction third incentive increment to the petitioner therein for possessing M.Phil qualification. Therefore, a similar order may be passed in this writ petition also, learned counsel for the petitioner pleaded.

4.The narrow issue raised in the present writ petition is, whether a P.G Assistant having awarded with two incentive increments, after acquiring M.Phil degree, is also entitled to third incentive increment?. The answer is Yes. This issue is no longer *res integra*, since the same has been settled in more than one case. At this juncture, it is relevant to extract paragraphs 3 to 5 of the order passed by me in W.P(MD)No.17022 of 2014, dated 17.10.2014, which are given as under:-



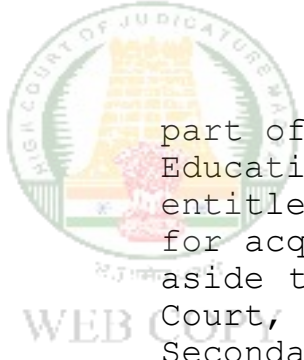
squarely covered by the decisions made in W.P(MD)No.2528 of 2007 dated 20.12.2007, W.P(MD)No.9200 of 2011 dated 12.04.2011, W.P(MD)No.7291 of 2013 batch, dated 05.07.2013, W.P(MD)No.11802 of 2013 batch, dated 24.07.2013, W.A(MD) No.867 of 2014 dated 18.09.2014, and also by G.O.Ms.No.17, School Education Department, dated 08.01.2008, G.O.Ms.No.209, School Education Department, dated 08.07.2010 and G.O.(2D) No.15, School Education Department, dated 28.03.2013. therefore, he pleaded, the petitioner is entitled to the relief sought for, in the light of the Government Orders and the decisions mentioned supra.

4. In W.P(MD)Nos.11802 to 11806 of 2013 dated 24.07.2013, at paragraphs 14, 15, 19 and 20 this Court held as follows:-

"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 placed 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 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.'

5. In the light of the above decision, the impugned order passed by the 4th respondent in O.Mu.No.110/2013, dated 10.10.2013, is set aside 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 four weeks from the date of receipt of a copy of this order.



The writ petition is accordingly allowed. No costs.

/Sd
Assistant Registrar (CS II)

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Sub Assistant Registrar 6

To

- 1) The Secretary to Government,
School Education,
Fort St. George, Chennai-9.
- 2) The Director of School Education,
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- 3) The District Educational Officer,
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- 4) The Headmaster,
Government Higher Secondary School,
Uranganpatti, Melur Taluk,
Madurai District.

+1cc to MMr.C.Arul Vadivel@Sekar, Advocate in SR.No.28172

SDR/SK-SKN/16.06.2016/5P/6C

W.P (MD) No.19065 of 2013
06.06.2016