

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P. No.23576 of 2004 &
W.P.M.P.No.28550 of 2004

S.Tamildevi

... Petitioner

-vs-

- 1.The Government of Tamil Nadu,
Represented by the Secretary to Government,
Education Department, Fort St. George,
Chennai-600 009.
- 2.The Headmaster,
Government High School,
Sathanur - 613 203,
Thanjavur District. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders of the second respondent in Na.Ka.No.295/03, dated 21.06.2004 and Na.Ka.No.71/2004, dated 14.07.2004 and quash the same and direct the second respondent to fix the pay of the petitioner in accordance with the orders of the first respondent in G.O.Ms.No.1024, Education Department, dated 09.12.1993 by allowing one incentive increment for acquiring M.A., qualification with effect from 27.05.1999 and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Manoj Kumar

For Respondents: Mr.M.Elumalai
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus, calling for the records relating to the impugned orders of the second respondent in Na.Ka.No.295/03, dated 21.06.2004 and Na.Ka.No.71/2004, dated 14.07.2004 and quash the same and direct the second respondent to fix the pay of the petitioner in accordance with the orders of the first respondent in G.O.Ms.No.1024, Education Department, dated

09.12.1993 by allowing one incentive increment for acquiring M.A., qualification with effect from 27.05.1999 and grant all consequential benefits to the petitioner.

2. Heard Mr.P.Manoj Kumar, learned counsel appearing for the petitioner and Mr.M.Elumalai, learned Government Advocate appearing for the respondents.

3. The facts of the case is that the petitioner, who is working as Secondary Grade Teacher at the Government Higher Secondary School, Sathanur, Thanjavur District, challenging the Recovery Proceedings ordered by the second respondent based on the audit objection, filed this Writ Petition.

4. The petitioner initially appointed as Secondary Grade Teacher on contract basis on 06.11.1987. Though the petitioner was fully qualified for appointment of graduate teacher, since no qualified Secondary Grade Teacher available, the petitioner was appointed as Secondary Grade Teacher on contract basis. However, the petitioner's services were regularized for the post of Secondary Grade Teacher with effect from 01.06.1988.

5. In order to encourage the Secondary Grade Teachers, who acquired Higher Educational Qualification, eligible incentive increments is given vide G.O.Ms.No.42, Education Department, dated 10.01.1969 and G.O.Ms.No.324, Education Department, dated 25.04.1995. These Government Orders were issued in order to encourage the Secondary Grade Teachers to improve the standard of educational system and ultimately the students community going to be benefited. The Government also issued G.O.Ms.No.1024, Education Department, dated 09.12.1993 and granted maximum two incentive increments to a Secondary Grade Teacher for acquiring the higher educational qualification.

6. The petitioner after regularizing the service in the post of Secondary Grade Teacher in the year 1988, she acquired M.A. Degree on 26.05.1999 in order to avail the incentive increment as awarded in G.O.Ms.No.1024, Education Department, dated 09.12.1983. The petitioner made an application before the Authority. Accordingly, on 27.05.1999, the increments were granted in favour of the petitioner after revision of the pay fixation. The order was passed in her favour on 17.11.1999.

7. While so, based on the audit objection, the second respondent passed the impugned order, dated 21.06.2004 stating that since the petitioner did not possess the required qualification of Secondary Grade Teacher, she is not entitled to any incentive increments for acquiring higher qualification. Accordingly, the petitioner's fixation of pay was revised and ordered for recovery dated 14.07.2004.

8. The learned counsel appearing for the petitioner would submit that though the petitioner possessed higher qualification, she was appointed as Secondary Grade Teacher and the said post was regularized on 01.06.1988 itself and subsequently she possessed higher education in M.A. Degree. Thereafter, she was rightly granted two increments as per G.O.Ms.No.1024, Education Department, dated 09.12.1983 and the petitioner availed increments as per the above said G.O and therefore, the order of the recovery is bad. The learned counsel also relied upon the Division Bench Judgment of this Court in R.Premakumari v. State of Tamil Nadu reported in (2008) 5 MLJ 1349 and it is relevant to extract the following portions of the said judgment:-

"7. The learned single Judge has observed 'Incentive increments are granted only for persons acquiring higher qualifications while in service but not to a person, who possesses a higher qualification even before entering into service.'

8. We do not think the aforesaid observation of the learned single Judge can stand the scrutiny of logic or even reality. The obvious intention in granting an incentive increment is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification, even though in service, so that the quality of service would improve. This is obviously on the assumption that a higher qualified person could work more efficiently. Therefore, it defies logic as to why a person who had already qualified would not get an incentive increment, if such an incentive increment is given to a lower qualified person in service, who acquires subsequently such higher qualification. Such a differential treatment would not stand the scrutiny of right to equality as enshrined in Articles 14 and 16 of the Constitution.

9. That apart, if the relevant G.Os are examined carefully, it can be safely concluded that the G.Os in reality do not intend to lay down in the manner it has been now concluded by the learned single Judge. We have already extracted the relevant portions of the G.Os. The underlined portion of G.O.Ms.No.42 dated 10.1.1969 indicates that if a person possessing higher qualification enters into service, his initial pay may be fixed by giving advance increments. Similarly in the subsequent G.O.Ms.No.747, dated 18.8.1986, paragraph 2 makes it clear that "the P.G. teachers and Headmasters of Higher Secondary Schools who possess or acquire Post Graduate qualification in education i.e. M.Ed., Degree shall be granted two advance increments

in the scales of pay admissible to them". It is nowhere contemplated in the G.Os., that the incentive increments would be given only to those who acquired subsequently the qualification, but it would be given to all those who either possess, which means the degree is obtained at the time of entering into service or acquire, which means the degree is obtained after entering into service. Even the subsequent G.Os or the clarifications, nowhere indicate that in order to be eligible for getting incentive increment, the person has to acquire such higher qualification only after entering into service and not otherwise. Therefore, we are unable to accept the conclusion of the learned single Judge that a person who enters into service after having acquired a higher qualification, is not entitled to get incentive increments.

10. Since the impugned order was passed on the basis that the appellant was not entitled to receive incentive increments having entered into service with higher qualification is now disapproved by us, the authorities are required to consider the matter afresh in the light of the conclusion already made to the effect that the appellant was entitled to receive such increments at the time of entry into service."

The said Division Bench Judgment was followed by the learned Single judge of this Court in G.Meenalochini v. Chief Educational Officer, Trichy reported in (2014) 8 MLJ 746.

9. The learned counsel appearing for the respondents did not dispute the legal position stated supra.

10. For the above said reasons, I am inclined to grant benefit of the judgment stated supra. Accordingly, the Writ Petition is allowed and the impugned orders dated 21.06.2004 and 14.07.2004 are set-aside. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

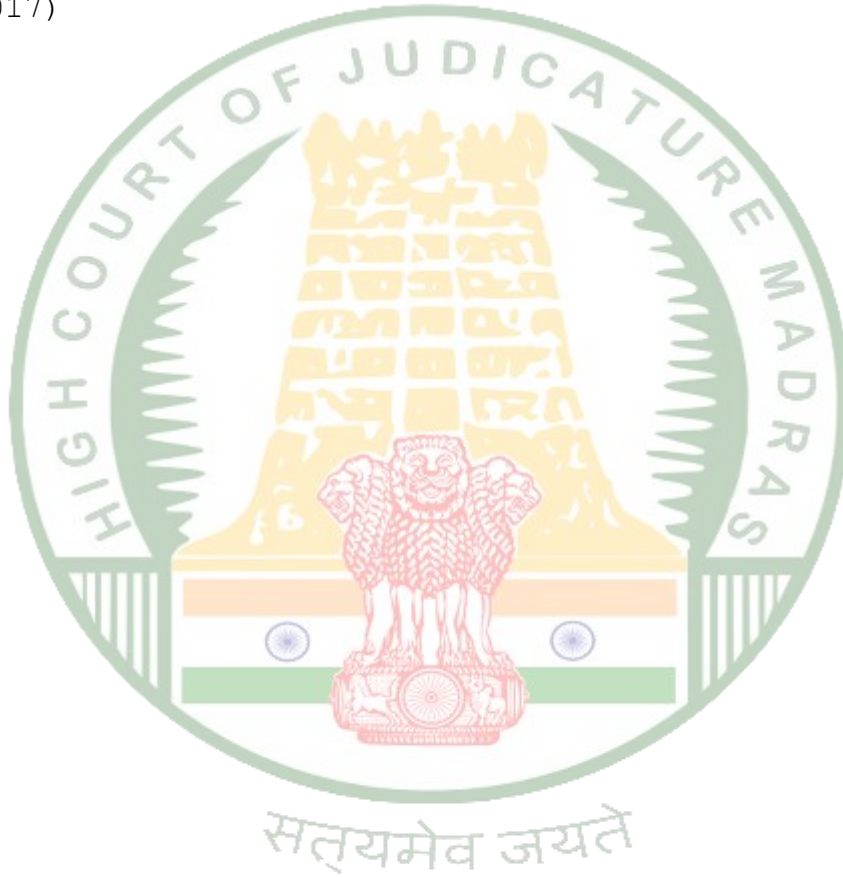
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To

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sj(co)
ss(14/9/2017)



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