



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.05.2017

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P (MD) No.12430 of 2015

V.Appavoo

... Petitioner

vs.

- 1) The Assistant Director of Elementary Education,
(Administration),
Office of the Director of Elementary Educational Officer,
Chennai-600 006.
 - 2) The District Elementary Educational Officer,
Dindigul, Dindigul District.
 - 3) The Assistant Elementary Educational Officer,
Vedasandhur, Dindigul District.
- ... Respondents

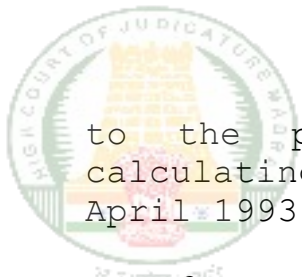
Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certioraried Mandamus, to call for records from the respondents in their proceedings in ஒ.மு.எண்.1051/அ1/2015 dated 23.01.2015, ஒ.மு.எண்.653/ஆ4/2015 dated 22.02.2015 and ந.க.எண்.16124/இ4/2015 dated 30.06.2015 respectively and quash the same and consequently direct the respondents to grant 1 set of 3rd incentive increment to the petitioner for acquiring M.Ed., by calculating the arrears from the date of his qualification (i.e.,) April 1993 within the time stipulated by this Court.

For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.J.Gunaseelan Muthiah,
Government Advocate.

ORDER

Prayer in the writ petition is for a writ of Certiorarified Mandamus, calling for records from the respondents in their proceedings in ஒ.மு.எண்.1051/அ1/2015 dated 23.01.2015, ஒ.மு.எண்.653/ஆ4/2015, dated 22.02.2015 and ந.க.எண்.16124/இ4/2015, dated 30.06.2015 respectively and quash the same and consequently, direct the respondents to grant one set of 3rd incentive increment



to the petitioner for acquiring M.Ed., qualification by calculating the arrears from the date of his qualification (i.e.,) April 1993 within a time to be stipulated by this Court.

2. The short facts leading to filing of this writ petition is as follows:

(i) The petitioner was appointed as a Secondary Grade Teacher on 01.08.1964 and was posted at Panchayat Union Middle School, Viveswaram, Vendasandhur Union, Dindigul District. Thereafter, he was promoted as Head Master and was posted at Panchayat Union Primary School at Karayampatti, Vendasandhur Panchayat Union, Dindigul District. Thereafter, the petitioner was promoted as Head Master (B.T Cadre) at Panchayat Union Middle School, Jennankottai, Dindigul District. The petitioner had attained superannuation on 31.03.2002 and retired from service.

(ii). The petitioner had acquired the qualification of B.A. (History) in the month of September 1975, thereafter, he was qualified to hold the degree of Bachelor of Education (B.Ed) in the month of October 1980. The petitioner had also acquired the qualification of M.A., degree in (History) in the month of April 1983 and the petitioner also acquired the qualification of Master of Education (ie.,) M.Ed., Degree in the month of April 1993.

(iii) For acquiring the higher qualification of B.A., degree as well as M.A. Degree, the petitioner was already awarded two set of incentive increment in the year 1980 and 1983 as well. Thereafter, the petitioner since was promoted as Head Master (B.T Cadre) and subsequently, qualified with M.Ed., degree, he had requested for awarding third set of advance incentive increment for the said qualification of M.Ed., degree and the same has not been considered by the respondents.

(iv) In fact the said request of the petitioner had been rejected by the order of the third respondent on 23.01.2015 as against which, the petitioner filed an appeal before the second respondent, who in turn also had rejected the request of the petitioner, by his order dated 27.02.2015 and confirming the order passed by the third respondent. Thereafter, the petitioner had further appealed to the first respondent and from the office of the first respondent, the reply was given to the petitioner under Right to Information Act where also the request of the petitioner was turned out and it was informed to the petitioner that the order passed by the lower authorities i.e., the third and second respondents are in order. Challenging all these proceedings issued by the respondents, rejecting the claim of the petitioner seeking third incentive increment for acquiring M.Ed., qualification, the petitioner has filed the present writ petition with the aforesaid prayer.



3. The reason cited invariably in the order passed by the third respondent as has been confirmed by the second and first respondent is that, the grant of third incentive increment were given only to those who have approached the High Court and obtained orders of the court, where the third incentive increment was directed to be given to various individuals, who approached the Court of Law to get order, the request of the petitioner was turned out as there is no provision to grant third set of incentive increment.

4. Heard Mr.N. Sathish Babu, learned counsel appearing for the petitioner as well as Mr.J.Gunaseelan Muthiah, learned Government Advocate appearing for the respondents.

5. Substantially, the issue raised in this writ petition is covered by the decision of this Court in Division Bench judgement in W.A(MD).No.867 of 2014, which has been accepted and acted upon by the department. Considering the said decision of the Division Bench of this Court, which is an elaborate order where all these issues have been considered and answered, I have allowed two petitions today in W.P.(MD).No.19214 of 2014 and W.P.(MD).No.17434 of 2014. In the said orders, I have given the reasons for allowing the writ petitions which reads as follows:

"4.The further case of the petitioner is that for acquiring the higher qualification of B.Ed as well as M.A degree, two set of incentive increment had already been provided to the petitioner. However, insofar as the acquisition of M.Phil degree, according to the petitioner, though she would be entitled to get further set of advance incentive increment the same has not been provided. According to the petitioner, the reason for not giving the third set of advance incentive increment for acquiring the M.Phil qualification is because of the Government Order in G.O.Ms.No.1170, Education Department dated 20.12.1993.

5.The further case of the petitioner is that though subsequently Government issued G.O.Ms.No.194, School Education Department dated 10.10.2006, whereby the embargo of cut of date fixed by the earlier G.O.Ms.No.1170, Education Department dated 20.12.1993 has been deleted, the respondents have not considered the request of the petitioner for grant of advance increment for acquiring the higher qualification of M.Phil., degree. In this regard the petitioner had given a representation on 06.10.2014 to the respondents through the fourth respondent and the said representation had not at all been considered. Therefore the petitioner has approached this



Court by way of the present Writ Petition with the aforesaid prayer.

6.Mr.N.Sathish Babu, the learned counsel appearing for the petitioner would submit that the petitioner though already obtained two set of advance incentive increment for acquiring B.Ed as well as M.A degrees, she would be further entitled to claim third set of advance incentive increment for her acquiring the qualification of M.Phil degree. The learned counsel would further submit that though G.O.Ms.No.1170, Education Department dated 20.12.1993 has fixed a cut of date that only those who possess the higher qualification such as M.Phil/Ph.D/ P.G Diploma in teaching English as on 01.03.1993 alone would be entitled to get the benefit of getting advance incentive increment, the said prescription of cut of date has subsequently been deleted by G.O.Ms.No.194, School Education Department dated 10.10.2006. In this regard, the learned counsel for the petitioner would rely upon paragraph Nos.2, 3, 4 & 5 of G.O.Ms.No.194, School Education Department dated 10.10.2006, which reads thus:-

"2.The Post Graduate Teachers working higher Secondary Schools approached the High Court, Chennai for not granting incentive increment to them for their Higher qualification they obtained after 01.03.1993. As per the Judgment of the High Court, Chennai on 12.02.1998 against the Writ Petition No.17884/1998 and some other such cases, on incentive increment (2 increments) may be given for M.Phil qualification to the Post Graduate Teachers. The Director of School Education made an appeal against this Judgment in addition to this Officers working under the Director of School Education and the correspondents of aided Schools made an appeal against their Judgment dated 12.02.1998. The High Court at Chennai rejected all the appeal petitions and gave the Judgment on 20.06.2006 reiterating the Judgment given already by the High Court and ordered them to execute the same us their eight weeks.

3.All the petitions against the sanctioning of incentive increment to the Post Graduate Teachers for their higher Post Graduate Teachers for their higher qualifications such as M.Phil/Ph.D/PGDTE have been rejected of the stipulated time 01.03.1993 in G.O.Ms.No.1170 of the Education Science and Technology Department dated 20.12.1993 in omitted many kinds of judicial cases will come to an end. Hence the Director of School Education recommended that in order to implement the verdict of the High Court, Chennai dated 20.06.2006 the date 01.03.1993, can be omitted in the page 3 of the



G.O.Ms.No.1170 of the Education Science and Technology Department dated 20.12.1993 amendment.

4.In G.O.Ms.1170 of the Education Science and Technology Department dated 20.12.1993 page 3(11) has been deleted.

5.This order has been issued on the concurrence of the Finance Department G.O.Ms.No.611920/Education/2006 dated 10.10.2006."

7.In view of the aforesaid Government Orders and the qualification of P.G. degree namely M.Phil acquired by the petitioner, the learned counsel for the petitioner would submit that the petitioner would be entitled to get third set of advance incentive increment and since the same has not been granted or her representation in that regard dated 06.10.2014 is also not considered by the respondents, the petitioner has approached this Court and therefore the learned counsel would submit that the Mandamus as prayed for in this Writ Petition may be granted.

8.Per contra, Mr.S.Kumar, the learned Additional Government Pleader appearing for the respondents would submit that the two Government Orders referred to by the petitioner's side, namely, G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006, are applicable only to P.G. Teachers or P.G. Assistants. In so far as the petitioner is concerned, she is only a Secondary Grade Teacher and has subsequently been promoted as Headmistress of a Primary School and therefore the two Government Orders referred to above would no way applicable to the case of the petitioner and therefore on the strength of the said Government Orders, the petitioner cannot seek any benefit.

9.The learned Additional Government Pleader would also submit that apart the petitioner was already granted two set of advance incentive increment for acquiring higher qualification, namely, B.Ed., and M.A, and she is enjoying the same. A teacher in the entire service period would only entitle for two set of advance incentive increment and beyond that even though further higher qualification is acquired by a teacher, he would not be entitled to get any further advance increment i.e., third set of advance increment and therefore, since the petitioner has already got two set of advance increment, she would not be entitled to claim the third set and therefore her claim made in this regard is liable to be rejected.



10. In this regard, the learned Additional Government Pleader would rely upon paragraph No.4 of the counter affidavit filed by the third respondent which reads thus:-

WEB COPY

"4. It is submitted that the Government have instructed in their letter No.590, Education Department dated 20.03.1976 that in the case of teachers who got already four advance increments (two incentive increments) for acquiring higher qualifications, the question of sanctioning further advance increments to them either in the old scale of pay or in the revised scale of pay does not arise if any made, such amounts may be recovered. Again in letter No.14705/E2/97-19 dated 31.05.2000, the Government have ordered that all the categories of teachers will be given only two incentive increments in their entire service period and there is no need to revise the stand of the Government further more. It is also submitted that the Government in their orders, G.O.Ms.No.1023 Education, Science and Technology Department dated 09.12.1993 have specifically informed that in future, the maximum number of advance increments admissible to a teacher for obtaining higher qualifications under the orders shall be four only (two incentive increments)."

11. This Court has considered the rival submissions made by the learned respective counsel appearing for the parties. The prime objection according to the learned Additional Government Pleader is that the petitioner since already obtained two set of advance incentive increment for acquiring higher qualification would not be entitled for further advance incentive increment. Secondly, the two Government Orders referred from the side of the petitioner are only related to P.G. Teachers or P.G. Assistants and since the petitioner are only a Secondary Grade Teacher or Headmistress of a Primary School, those Government Orders would not be made applicable to the case of the petitioner.

12. In so far as the two objections raised on behalf of the respondents are concerned, the learned counsel appearing for the petitioner would rely upon two decisions of this Court one is by the learned Single Judge made in **W.P. (MD) No.11802 of 2013 etc. batch dated 24.07.2013** in the matter of **K.Nagasubramanian Vs. The Secretary to Government, School Education Department and others**. The other decision relied by the learned counsel for the petitioner is the Division Bench Judgment of this Court made in **W.A. (MD) No.867 of 2014 dated 18.09.2014** in the



matter of **The Director of School Education, Chennai and another Vs. N.Balasoundari and another.**

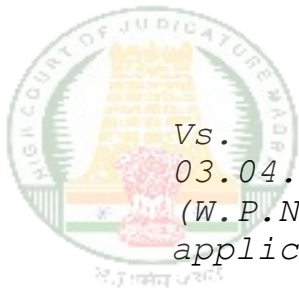
13.The issue raised in this Writ Petition in the opinion of this Court is covered by the said decisions relied on by the petitioner's side, especially the decision of the Division Bench of this Court referred to above.

14.In fact, the similar objection, as has been raised in this Writ Petition by the respondents' side, has been raised by the respondents therein in the Writ Appeal also which has been extracted by the Division Bench of this Court at paragraph 6 of the order dated 18.09.2014 in W.A. (MD)No.867 of 2014 which reads thus:-

"6.According to the District Educational Officer, Paramakudi, second appellant herein, as per the G.O.Ms.No.42, Education Department, dated 10.01.1969, the Writ Petitioner was awarded with two incentive increments each for B.Ed., and M.A. As per G.O.Ms.No.1024, Education, Science and Technology Department, dated 09.12.1993, the maximum number of advance increments, which a Teacher can get under the scheme, is four, in his/her entire service. Therefore, the second appellant has submitted that four advance increments (two incentive increments) were already given to the writ petitioner, and therefore, she is not eligible for the third incentive increment."

15.After considering the various issues and Government Orders in this regard by a very elaborate Judgment that the Division Bench of this Court has ultimately concluded that a teacher would be entitled to get any number of advance incentive increment for acquiring higher qualification and such claim can be made even after the retirement of the teacher concerned. The relevant portion of the order of the Division Bench of this Court in paragraph Nos.35 to 37 is extracted hereunder:-

"35.Reverting back to the case on hand, it could be seen that the respondent/writ petitioner, in the post of Physical Education Teacher completed her B.A in 1980 and B.Ed in 1982. Considering her educational qualification, she has been granted two advance increments for B.Ed., on 29.12.1982. She has acquired M.A in the year 1985. She was posted as B.T Assistant in 1987. She has been granted two advance increments for acquiring M.A qualification in the post of B.T Assistant with effect from 20.07.1987. She has completed M.Ed., in the month of December 1987 much before 09.12.1993. Decisions in the Director of School Education



Vs. S. Shanmugam (W.A.No.604 of 2005, decided on 03.04.2008) and P.B.Bheeman Vs. The Registrar (W.P.No.41451 of 2005, decided on 01.08.2008) can be made applicable to the present case.

WEB COPY

36.Though both the cases relate to Tamil Pandits, the principle of law to be applied for grant of incentives for having higher qualifications in service, at the time of entry into service or subsequently acquired, applies to a B.T teacher also. At this juncture, we wish to state that from the Government Orders referred to above, what is required to be considered is the educational qualifications possessed or acquired by a teacher. Now, when this Court has recognised the grant of advance incentive increment to a Tamil Pandit I, for possessing B.T qualification and when the Government have recognised the right of Tamil Pandit II, to seek for advance increments for acquiring B.T qualification, in the post of Tamil Pandit II, and further recognised the rights of both, to claim advance increments, after B.T., and M.A., separately and thereafter, for M.Ed., qualification, in terms of G.O.Ms.No.42, we are unable to understand as to how the Government could raise objections. The objections are untenable.

36.Though it is contended that during the period of service or reemployment, the writ petitioner has not made any claim for third incentive for M.Ed qualification, that would not curtail her right to claim after retirement. Entitlement to claim continues even after retirement.

37.For the reasons stated supra, we do not find any merit in the appeal. Accordingly, the Writ Appeal is dismissed. Appellants are directed to sanction and pay the arrears of incentive increment, to the Writ Petitioner for M.Ed degree qualification, within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs."

16.In view of the said pronouncement of a Division Bench of this Court, the objection raised by the respondents that the petitioner since has already acquired higher qualification for which she had already obtained two advance incentive increment and therefore she would not be entitled to get further advance incentive increment as the maximum incentive increment can be only two sets i.e., first and second increment, cannot be a acceptable argument, as the issue has been well settled by the said decision of the Division Bench of this Court.



17. In so far as the further argument of the learned Additional Government Pleader that the two Government Orders, namely G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006 would not be made applicable to the case of the petitioner is concerned, even such objection in the opinion of this Court, may not be sustainable because in the two judgments relied on by the petitioner's side all these issues have been exhaustively discussed and decided. In a case of a Physical Education Teacher, the issue of grant of advance incentive increment for acquiring higher qualification has also been considered and decided in favour of the Teacher concerned. Also, a Tamil Pandit, as well as B.T Teacher has been considered for grant of advance incentive increment for acquiring higher qualification. Therefore the said argument that the relevant Government Orders namely G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006, would not be made applicable to the case of the petitioner is concerned, is also liable to be rejected as without the aid of the said Government Orders the petitioner can independently claim the third set of advance incentive increment for acquiring the higher qualification, namely, M.Phil degree. The only aid that the petitioner can take it from G.O.Ms.No.194, School Education Department dated 10.10.2006 is that the hurdle created in G.O.Ms.No.1170, Education Department dated 20.12.1993 by putting a cut of date 01.03.1993 since has been removed or deleted by G.O.Ms.No.194, School Education Department dated 10.10.2006, at paragraph No.4. Therefore on that score it cannot be said that only on the strength of G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006 alone the petitioner is claiming her advance incentive increment for acquiring the qualification of M.Phil as a third set of incentive increment. Therefore all the contentions raised by the respondents' side, since has been covered by the said decisions of this Court, as has been referred to above, are liable to be rejected. Therefore, accordingly they are rejected.

18. In the result, this Court is of the view that the petitioner's request for grant of third advance incentive increment for acquiring M.Phil degree qualification can very well be considered by the respondents.



19. Resultantly, the following orders are passed in this Writ Petition:-

(i) The third respondent is directed to consider the request of the petitioner, dated 06.10.2014 seeking for third advance incentive increment for acquiring M.Phil qualification from 02.04.2009.

(ii) Since the representation of the petitioner is dated 06.10.2014, a copy of the same shall be forwarded by the petitioner to the third respondent along with the copy of the Writ Appeal Judgment in W.A(MD)No.867 of 2014 immediately within a period of one week from the date of receipt of a copy of this order.

(iii) On receipt of the same, while making consideration of the representation of the petitioner, the third respondent shall take into account the Division Bench Judgment of this Court in W.A(MD)No.867 of 2014, dated 18.09.2014 and pass orders for grant of third advance incentive increment for the petitioner for the aforesaid qualification of M.Phil degree from the said date ie., 02.04.2009 and accordingly calculate the pay and arrears payable to the petitioner and pay the same within eight weeks thereafter.

(iv) With these directions, this Writ Petition is disposed of. No costs."

6. In view of the aforesaid orders, this Court is inclined to pass the following orders in this writ petition also:

(i) The Impugned orders are quashed.

(ii) The respondents are directed to pass necessary orders for grant of third advance incentive increment to the petitioner for acquiring M.Ed., qualification from the date he acquired the said qualification and accordingly, calculate the arrears of pay and pay the same to the petitioner.

(iii) In view of the grant of third incentive increment, the total pay would be increased to the petitioner, his pensionary benefits also shall be correspondingly revised and the pensionary benefits if any is calculated on that basis, also shall be paid to the petitioner.

(iv) The needful as directed above shall be done by the respondents, within a period eight weeks from the date of receipt of a copy of this order.



7. With these directions, this writ petition is disposed of .
No costs.

Sd/-

Assistant Registrar (CS-III)

WEB COPY/True Copy/

Sub Assistant Registrar

To

- 1) Assistant Director of Elementary Education,
(Administration),
Office of the Director of Elementary Educational Officer,
Chennai-600 006.
- 2) District Elementary Educational Officer,
Dindigul,
Dindigul District.
- 3) Assistant Elementary Educational Officer,
Vedasandhur, .
Dindigul District.

+1cc to Mr.N.Sathish Babu, Advocate Sr.No.55974

+1cc to Spl.Government Pleader Sr.No.55977

TRP/IA

VB/SV/MMS/SAR1/29/11/2017/11P/6C

W.P (MD) No.12430 of 2015
08.05.2017