



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.05.2017

CORAM:

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No. 9317 of 2017

A.Louis Amal Raj

... 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 Chief Educational Officer,
Madurai District,
Tallakulam, Madurai.
4. The District Educational Officer,
Madurai Educational District,
Tallakulam, Madurai.
5. The Correspondent,
St. Britto Higher Secondary School,
Gnanaolivupuram,
Madurai - 16.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 4th respondent to sanction 3rd incentive increment to the petitioner from the date of possessing M.Phil., degree i.e., from April 1995, in the light of the order of this Court dated 20.12.2007 in W.P. (MD) No. 2528 of 2007, order dated 12.04.2011 in W.P. No. 9200 of 2011, order dated 05.07.2013 in W.P. (MD) Nos. 7291 of 2013 batch, order dated 24.07.2013 in W.P. (MD) No. 11802 of 2013 and batch, order dated 18.09.2014 in WA (MD) No. 867 of 2014 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.

**ORDER**

The petitioner has been filed the writ petition for the issuance of Writ of Mandamus, directing the 4th respondent to sanction 3rd incentive increment to the petitioner from the date of possessing M.Phil., degree i.e., from April 1995, in the light of the order of this Court dated 20.12.2007 in W.P.(MD)No.2528 of 2007, order dated 12.04.2011 in W.P.No.9200 of 2011, order dated 05.07.2013 in W.P.(MD)Nos.7291 of 2013 batch, order dated 24.07.2013 in W.P.(MD)Nos.867 of 2014 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 case of the petitioner is that he joined in the service on the respondent / Department as B.T. Assistant on 03.06.1988 in St. Britto Higher Secondary School, Madurai, which is an aided minority school. Later, the petitioner has promoted as Post Graduate Assistant on 17.11.2006, thereafter, he was promoted as Headmaster on 13.06.2016 and the petitioner is in service till date.

3.It is the further case of the petitioner is that the petitioner's service was regularized from the date of his appointment. At the time of joining service, the petitioner was possessing M.A., (English) and M.Ed., and thereafter, he acquired M.Phil., degree from the Madurai Kamaraj University in the month of April 1995. The minimum qualification for the appointment of Secondary Grade Teacher is Higher Secondary with Diploma in Teacher Education and the minimum qualification for Graduate Teacher is Bachelor degree with B.Ed. The minimum qualification for Post Graduate Teacher is Post Graduate Degree with B.Ed.

4.While being so, the Government of Tamil Nadu has introduced the scheme for sanction of incentive increments to the teachers, who possess additional / higher qualifications than the minimum qualification prescribed for the post in which they are served. The above said scheme was implemented through G.O.Ms.No.42 Education Department dated 10.01.1969. It was the laudable object in the said G.O. is that the grant of advance incentive increments would encourage the teachers to gain additional knowledge, which should be helpful to the students and also taking note of the limited promotional avenues for the teacher community.

5.Pursuant to the above, the petitioner was granted first advance incentive increment in the year 1990 for his M.Ed., Degree and second advance incentive increment was granted in the year 1994 for his M.A. Thereafter, the Government of Tamil Nadu had issued two



Government Orders in G.O.Ms.Nos.1023 and 1024 (Education Department) dated 09.12.1993 amending the original G.O.Ms.No.42 dated 30.06.1969 and fixed the maximum number of advance increments admissible to a teacher as four only i.e. only two advance incentive increments.

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6.Later on one Mr.Kasikani, a Post Graduate Teacher has filed a writ petition before this Court in WP(MD)No.2528 of 2007 for the prayer to sanction one set of advance incentive increments for M.Phil., qualification, besides the two sets of advance incentive increments already received by him. Considering the said case of Mr.Kasikani, this Court allowed the writ petition on 20.12.2007 by directing the District Educational Officer, Virudhunagar to pay the 3rd incentive increment for M.Phil., degree. The said writ petition was allowed on the ground that earlier the Hon'ble Division Bench of this Court in W.A.No.2604 to 2606 of 1999 and W.A.No.2307 of 1999 and the decision in respect of the issue as to whether a teacher can get more than two incentive increments during his service. Therefore, as per the above judgments rendered by the Hon'ble Division Bench of this Court, a teacher can also get third incentive increment in his service. Therefore, the writ appeal in WA.(MD) No.426 of 2008 dated 27.06.2008 filed against the order in W.P.(MD) No.2528 of 2007 was also dismissed.

7.Apart from this, there are several other writ petitions were filed in WP.No.20437 of 1993, W.P.No.8078 of 1994, W.P.No.25977 of 2010 and W.P.No.9200 of 2011 and in pursuance of the order of this Court in W.P.No.9200 of 2011, a separate G.O.(2D) No.15 dated 28.03.2013 was issued to the petitioner K.Latha Devi granting 3rd incentive increment for possessing M.Phil., degree. The said earlier orders, in similar situation, this Court vide its common order allowed a batch of writ petitions in WP(MD)Nos.11802 to 11806 of 2013 on 24.07.2013 set aside the similar order passed by the District Educational Officer, Madurai and directed to consider the proposals in the light of the earlier judgments of this Court within a period of four weeks. Therefore, the petitioner has applied for 3rd advance incentive increment for his M.Phil., degree before the 4th respondent through 5th respondent vide his representation dated 07.04.2015, but the 4th respondent has not passed any order till date. Therefore, the petitioner approached this Court and filed the above writ petition for the above prayer.

8.When the matter is taken up for admission, Mr.A.Muthukaruppan, learned Additional Government Pleader has taken notice on behalf of the respondents 1 to 4 and with the consent of both the counsel, the matter is taken up for final disposal.

9. I heard Mr.C.Arul Vadivel @ Sekar, learned counsel appearing for the petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents 1 to 4 and perused



the entire records.

10. It is the case of the petitioner that he has completed M.A., (English), M.Ed., and M.Phil., in the year 1995 and he has worked as B.T. Assistant from 03.06.1988 and later on promoted as Post Graduate Assistant on 17.11.2006 and thereafter, he has promoted as Headmaster on 13.06.2016 based on his qualification.

11. It is admitted fact that the minimum qualification to be appointed as Secondary Grade Teacher is Higher Secondary with Diploma in Teacher Education and the minimum qualification for Graduate Teacher is Bachelor degree with B.Ed., and the minimum qualification for Post Graduate Teacher is Post Graduate degree with B.Ed. Admittedly, this petitioner having M.A., (English), M.Ed., M.Phil., and he has been appointed as B.T. Assistant and was promoted as Post Graduate Assistant and finally promoted as Headmaster of the School. One of the teachers was filed a writ petition before this Court seeking for one set of advance incentive increments for M.Phil., qualification, besides the two sets of advance incentive increments already received by him and this Court by order dated 20.12.2007 allowed the writ petition and directed the District Educational Officer, Virudhunagar to pay the 3rd incentive increment for M.Phil., degree.

12. Admittedly, the Hon'ble Supreme Court also considered in various cases for the additional increments. The Hon'ble Apex Court has considered the following cases:

(1) In **State of Karnataka v. N. Parameshwarappa** reported in **2003 (12) SCC 192** as follows:

"At the same time we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the Court."

(2) In **Govind Ram Purohit v. Jagjiwan Chandra** reported in **1999 SCC (L & S) 788** as follows:

"Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned."



(3) In ***Hari Ram v. State of Haryana*** reported in **2010 (2) CTC 336 (SCC)** as follows:

"If the courts are not correcting the wrong action of the Government, it may leave citizen with the belief that citizen is right in contacting right persons in Government as if Judicial Proceedings are not efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right guaranteed under Article 14 of the Constitution of India."

13. This Court pursuant to the orders of the above, the Hon'ble Division Bench of this Court in W.A.(MD)No.867 of 2014 dated 18.09.2014, passed the following orders:

"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.664 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.

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 re-employment, 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 reason 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. Consequently, M.P(MD)No.1 of 2014 is closed."

14. The Hon'ble Single Judge of this Court in WP.(MD)No.11802 of 2013 and batch dated 24.07.2013 passed the following orders:

"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, of course to the rules and 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'."

<https://hcservices.ecourts.gov.in/hcservices/>

As per the above judgments, the petitioner is entitled for the benefits.



15. In yet another case in W.P.(MD)No.7291 of 2009 and batch dated 05.07.2013, it has been held as follows:

"5. One of such similar order passed by this Court in W.P.(MD)No.2528 of 2007, dated 20.12.2007, was challenged by the department. A Division Bench of this Court, by Judgment dated 20.12.2007 made in W.A.(MD)No.426 of 2008, dismissed the said Writ Appeal.

6. Following the said judgments, the impugned orders are set aside and the Writ Petitions are allowed. The respondents are directed to sanction and pay incentive increments to the petitioners for possessing M.Ed., and M.Phil. Degrees, within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

16. As per the above judgment, it is made clear that this petitioner, who is having qualification of M.A., M.Ed., M.Phil., and this petitioner already obtained two sets of increments and for the advance of M.Phil., degree, the petitioner is entitled for third incentive of increments. Hence, the writ petition is liable to be allowed.

17. In the result:

(a) this writ petition is allowed;

(b) the respondents 1 to 4 are directed to sanction and pay the third incentive increment to the petitioner from the date of possessing M.Phil., degree;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar



To

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

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

3. The Chief Educational Officer,
Madurai District,
Tallakulam, Madurai.

4. The District Educational Officer,
Madurai Educational District,
Tallakulam, Madurai.

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 57565

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 57949

VSA/SKN

TE/SV-MMS/SAR-I : 06/10/2017 : 8P/7C

W.P. (MD) No. 9317 of 2017
25.05.2017