

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.30183 of 2008
and
M.P.No.2 of 2008

A.Rathinam,
Drawing Master,
Government Higher Secondary School,
Nimmiyampattu,
Vaniyampadi Taluk,
Vellore District. .. Petitioner

-Vs-

- 1.The Director of School Education,
College Road, Chennai-6.
- 2.The Chief Educational Officer,
Vellore, Vellore District.
- 3.The Headmaster,
Government Higher Secondary School,
Nimmiyam Pattu,
Vaniyampadi Taluk, Vellore District. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of to issue a Writ of Certiorarified Mandamus, to call for the records connected with Na.Ka.No.8117/B3/2007 dated 09.07.2008 of the 2nd respondent and quash the same and direct the respondents to sanction incentive increment for acquiring M.A. Degree.

For Petitioner : G.Elanchezhiyan
For Respondents : Mr.R.Govindasamy

Special Government Pleader

ORDER

The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the records connected with Na.Ka.No.8117/B3/2007 dated 09.07.2008 of the 2nd respondent and quash the same and direct the respondents to sanction incentive increment for acquiring M.A. Degree.

2.The learned counsel for petitioner would submit that the petitioner is working as Drawing Master at Government Higher Secondary School, Nimmiyampattu, Vellore District and he has continuously been working for the past 25 years without any remarks. During May 1995 he had passed M.A., Degree from Annamalai University through Open University system and the degree certificate was issued on 01.10.1996, Then he had passed B.Ed., Degree on 28.12.1996 from Annamalai university through the Open University system. Immediately the said M.A., and B.Ed., Degree qualifications were entered in the service Register. He was awarded 2 incentive increments for acquiring higher qualification of M.A., Degree and B.Ed., Degree from 01.10.1996 and 28.12.1996 respectively by the Headmaster, Government Higher Secondary School, Nimmiyampattu, Vellore District till the year of 2001. After 4 Years period, the Government of Tamilnadu had issued G.O.Ms.No.307 School Education Department, dated 15.12.2000 and directed the concerned authorities to award incentive increment for the teacher who acquire higher qualification through open University system by following G.O.Ms.No.1032, dated 27.06.1971, G.O.Ms.No.42 dated 10.01.1969 and G.O.Ms.No.1024 dated 09.12.1993 from the date of issuance of the said G.O.Ms.No.307 dated 15.12.2000. In the said G.O.Ms.No.307 dated 15.12.2000 the Government has not directed the concerned authorities to recover the incentive increment which was already awarded to the teachers for the period prior to the date of issuance of the said G.O.Ms.No.307 dated 15.12.2000. But the Director of Elementary Education, Chennai in his proceedings Na.Ka.No.437530 EH3/2000, dated 19.12.2000 directed their subordinate to recover the incentive increment awarded to the petitioner for acquiring additional qualification of M.A. Degree through Open University till 14.12.2000. Based on the Director proceedings and Audit Report, the 3rd respondent had issued a recovery order for granting incentive increment to higher qualification before the above said Government order in Na.Ka.No.47/file 03/2001, dated 26.07.2001.

3.The learned counsel for petitioner would submit that against the recovery order of the respondent, the petitioner made an appeal to the respondent, but there is no reply, In the meanwhile similarly situated persons had approached the Hon'ble High Court, Chennai and the Hon'ble Tamil Nadu Administrative Tribunal, Chennai. In all the cases, the Hon'ble High Court and the Hon'ble Tribunal held that:

"For the aforesaid reasons, the writ petition is allowed and it is ordered that the amount already recovered should be refunded and further all the arrears should be paid within a period of four months. No costs."

Based on the above said order, the petitioner also made a representation to the respondent on 19.04.2005 with a request to set aside the recovery order of the respondent and refund the recovery amount which recovered already to the petitioner.

4.The learned counsel for the petitioner would submit that hence he filed a writ petition before the Hon'ble High Court, Madras in W.P.No.10133 of 2006 with a prayer to directing the respondent to consider and pass orders on the representation of the petitioner dated 19.04.2005 based on the orders of the Hon'ble High Court dated 09.12.2002 in W.P.Nos.12912 and 12913 of 1999 with regard to incentive increment for acquiring higher qualification from the date of passing the degree course. This Hon'ble Court while admitting the above said writ petition had passed final order on 12.04.2006 as follows:

"Considering the limited relief, the 2nd respondent is directed to consider and pass orders on the representation of the petitioners dated 19.4.2005 respectively as per the order of this Court dated 9.12.2002 in W.P.Nos.12912 and 12913 of 1999 and also the Governments orders that are in vogue, within a period of twelve weeks from the date of receipt of copy of this order. Both the writ petitions are disposed of accordingly. No costs."

5.The learned counsel for the petitioner would submit that after receiving this Court order, the respondent has rejected the claims of the petitioner in Na.Ka.No.8117/B2/06 dated 16.10.2006 without stating any reason and without quoting any court order for non sanctioning incentive increment for acquiring M.A., Degree higher qualification. This is illegal arbitrary and shows malafide intention of the respondents. As

per the Government order in G.O.Ms.No.1023, Education Department and G.O.Ms.No.1024, Education Department, dated 09.12.1993 the petitioner is entitled for one incentive increment for acquiring M.A. Degree qualification and another one for B.Ed., degree.

6.The learned counsel for the petitioner would submit that hence the petitioner was forced to file a writ petition before the Hon'ble High Court in W.P.No.15821 of 2007 and challenged the order of cancellation of increment and consequential recovery order. After hearing both side arguments, this Court has passed final order as follows:

"Following the said judgments, the impugned orders in so far as recovery is quashed. In so far as refixation is concerned, the respondents are given liberty to issue notice to the petitioner and after getting explanation from the petitioner, it is open to the respondents to pass revised orders, if it is warranted."

7.The learned counsel for the petitioner would submit that after receiving this Hon'ble High Court order, the respondent has issued a notice on 06.06.2008 and instructed the petitioner to submit explanation as to why the incentive increment for M.A., Degree should not be cancelled. After receiving the said notice, The petitioner submitted his detailed explanation on 23.06.2008 that he is equivalent to the Secondary Grade Teacher and he is also taking class to the students and hence he is also eligible and entitle to get incentive increment for acquiring higher qualification i.e., M.A., Degree as was given to the Secondary Grade Teacher. After receiving the petitioner's detailed representation, the respondent without considering his request and have passed a non-speaking order in Na.Ka.No.8117/A3/2007, dated 09.07.2008 and rejected the request of the petitioner without any valid reason.

8.Per contra, the learned counsel for the respondent would submit that the reason for non sanctioning of incentive increments for acquiring M.A., Degree higher qualification was given in the proceedings of the Chief Educational Officer, Vellore dated 05.06.2008 addressed to the petitioner that according to G.O.Ms.No.42, dated 10.01.1969 a special teacher is eligible to get incentive increments for getting B.Ed., higher qualifications for once only, and that special teachers are not eligible to get incentive increment for any other higher qualifications.

9.The learned counsel for the respondent would submit that in the G.O.Ms.No.42, dated 10.01.1969 it is clearly mentioned a distinction between a Secondary Grade Teacher and a Special Teacher where in a Secondary Grade Teacher is eligible for two set of incentive increments whereas a Special Teacher is eligible to draw only one set of incentive increment for acquiring higher qualification.

10.The learned counsel for the respondent would submit that in the G.O.Ms.No.1023, Education Department, dated 09.12.1993 and G.O.Ms.No.1024, Education Department, dated 09.12.1993 it is clearly states that a Secondary Grade Teacher is eligible for two advance increment when acquire B.T. or B.Ed., qualification. He is again eligible for two advance increments when he acquires M.A., M.Sc., or M.Ed., qualifications.

11.The learned counsel for the respondent would submit that Special Teachers have not been awarded incentive increments for acquiring M.A., higher qualification in this District so far and so there has been no discrimination. The petitioner admits that the respondents issued a show cause notice on 20.05.2008 and instructed the petitioner to submit his explanation within a week's time. Though the petitioner was required to submit his explanation within a week's time, the petitioner did not comply the instruction.

12.I heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents and perused the entire materials available on record.

13.The case of the petitioner is that he was initially appointed on 29.10.1981 as Drawing Master on 29.10.1981 later it is called as Vocational Instructor and was working at Government Higher Secondary School Nimmiyampattu, Vellore District. While he was working as Vocational Instructor he acquired higher qualification of M.A., Degree from Annamalai University in May 1995 and then he passed B.Ed., degree on 31.12.1996. Thereafter he was granted 2 incentive increments for acquiring the higher qualification such as B.Ed., Degree and M.A., Degree from 01.10.1996 and 28.12.1996. After lapse of 4 years the Government issued an order in G.O.Ms.No.307, School Education Department, dated 15.12.2000 and directed the authority to grant incentive increment for acquiring degree through open university by following the G.O.Ms.No.42, Education Department, dated 10.01.1969, G.O.Ms.No.1032, Education Department dated

27.06.1971 and G.O.Ms.No.1024, Education Department, dated 09.12.1993 from the date of issuance of the Government Order. But in the said G.O. does not say about the recovery of incentive increment granted prior to the Government Order. However based on the proceedings of the Director of School Education, dated 19.12.2000 the 3rd respondent issued a recovery proceeding for granting incentive increment before the G.O.Ms.No.307, Education Science and Technology Department, dated 15.12.2000.

14.As against the recovery order of the 3rd respondent the petitioner preferred an appeal to the 2nd respondent, since there is no reply. The petitioner filed a writ petition and prayed to consider his representation and pass orders on the same. The Hon'ble High Court also has granted a direction to the respondent to consider the petitioner representation dated 19.04.2005 and pass orders on the same within a reasonable time in the light of Government Orders and also in the lights of this Court Order.

15.After receiving this Court Order the respondent has rejected the claims of the petitioner without any valid reasons in Na.Ka.No.8117/B2/06, dated 16.10.2006. Against which the petitioner filed another writ petition in W.P.No.15821 of 2007 and challenged the said rejection order. The Hon'ble High Court after hearing bothside arguments has passed final order on 11.03.2008 and quashed the impugned rejection order in so far as recovery is concerned and in so far as re-fixation is concerned the respondent are given liberty to issue a notice to the petitioner and after getting explanation from the petitioner, it is open to the respondent to pass revised order if it is so warranted. Based on the Hon'ble High Court order dated 11.03.2007 now the respondent passed the present impugned order and denied incentive increment to the petitioner for acquiring M.A., Degree from 12.03.2008.

16.On perusal of the impugned rejection order, it is presumed that the said order is not only a non speaking order and also passed against the order of the Hon'ble High Court Order dated 11.03.2007. In the said High Court Order it is clearly stated that issue notice to the petitioner and after getting explanation from the petitioner, it is open to the respondent to pass revised order. But in the said rejection order it does not state any such details about the issuance of the notice to the petitioner and also receivance of the explanation from the petitioner. It simply states that re-fix the pay of the petitioner without granting incentive increment

for acquiring M.A., Degree. Hence the impugned order is liable to be set aside.

17. From the reading of Government orders which filed in the type set of the writ petition it is stated that the Craft Teacher is equivalent to the post of Secondary Grade Teacher and the scale of pay is also equivalent and also further says that what are all the benefits sanctioned to the Secondary Grade Teachers is also applicable to the Craft Teachers, whereas the respondent has sanctioned incentive increments to the Secondary Grade Teachers for acquiring M.A., Degree higher qualification, but the same benefits was not granted to the petitioner. Hence the impugned order is liable to be set aside as it is against the Article 14 of the Constitution of India.

18. As per the Government orders issued in G.O.Ms.No.1023 Education Department, dated 09.12.1993 and G.O.Ms.No.1024 Education Department, dated 09.12.1993 the petitioner is also entitle to incentive increment for acquiring M.A., Degree through open University. The said Government orders clearly state that:

"A Secondary Grade Teacher is eligible for 2 advance increment when he acquire B.T.(or) B.Ed., qualification. He is again eligible for 2 advance increments when he acquires M.A., (or) M.sc., (or) M.Ed., qualification. Hence the impugned orders are liable to be set aside."

19. The learned counsel for the petitioner has produced similar case order passed by this Hon'ble High Court of Madras in W.P.No.39789 of 2006 dated 15.03.2009 and the relevant portion is that:

"It is not in dispute that in G.O.Ms.No.42, Education Department, dated 10.01.1969 incentive increments are ordered to be given to the teachers qualification than the prescribed qualification. The said Government Order also provides incentive increment for special teachers. The petitioner herein being Vocational Instructor has to be treated as Special Teacher appointed in School."

20. The Hon'ble Supreme Court in the order dated 25.04.1997 considered a similar issue in the case of V.Gamgaram vs The regional Joint Director and others and held that the teachers on

improvement of their qualification are entitle to get advance increments other than the prescribed qualifications. The Government Order issued in G.O.Ms.No.42, Education Department, dated 10.01.1969 also states that the Government accepted the principle that incentive payments and awards should be given to teachers in schools, who acquire higher educational qualification. Since the petitioner has acquired M.Com., and B.Ed., Degrees, which are higher than the prescribed qualification of B.Com., the grant of incentive increments by the respondents earlier is perfectly in order and the impugned order passed by the second respondent holding that the vocational Instructor post is not included in G.O.Ms.No.42, Education Department, dated 10.01.1969 and therefore, the petitioner is not entitled to get the said benefits cannot be sustained. The petitioner having improved his qualification for which incentive increments having been sanctioned in accordance with the Government Order, the same cannot be withdrawn and no recovery could be ordered. Hence, the impugned order is liable to be set aside and accordingly, the same is set aside. The writ petition is allowed, as prayed for. No costs.

21.The learned counsel for the petitioner has produced another order passed by this Court in W.P.No.28040 of 2006 dated 05.11.2007 and the relevant portion is that:

"6. But both the grounds stated in the impugned order appear to be wrong. Paragraph 4 of the G.O.Ms.No.1023, Education, Science and Technology Department, dated 09.12.1993 as follows:

"4. Accordingly, the Government direct that Secondary Grade Teacher who got 2 advance increments for B.T. or B.Ed., qualification in the Secondary Grade posts and then 2 advance increments for M.A., or M.Sc., qualification in the post of B.T.Assistant This concession shall be eligible for 2 more advance increments if they have already obtained the M.Ed., qualification in the post of B.T.Assistant. This concession shall be admissible only to the past cases, i.e., to those who have already obtained the above qualification prior to the date of issue of these orders. In future, the maximum number of advance increments admissible to a Teacher for obtaining higher qualification under the orders first read above shall be four only."

7. The operative portion of the aforesaid Government Order makes it clear that it would cover only future cases and the cases where 5th and 6th increments have already been granted, cannot be

reopened. Moreover, the post of Physical Education Teacher is actually equivalent to Secondary Grade post and hence on a hyper technical ground that the word 'Physical Education Teacher' is not incorporated in paragraph 4 of the above G.O., the benefit cannot be denied to the petitioner."

22.It is clear from the above said Hon'ble High Court Orders that the vocational Instructor and Physical Education Teacher are all treated on par with the Secondary Grade Teacher and the hyper technical ground that the word Vocational Instructor post is not in the relevant G.Os cannot be accepted. Hence the petitioner is entitled to get incentive increment for acquiring the M.A., Degree from the date of passing.

23.In view of the above, the writ petition is allowed and the impugned order passed by the respondent in Na.Ka.No.8117/B3/2007, dated 09.07.2008 is set aside and consequently the respondents are directed to sanction incentive increment to the petitioner for acquiring M.A., Degree with all benefits. The said exercise should be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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

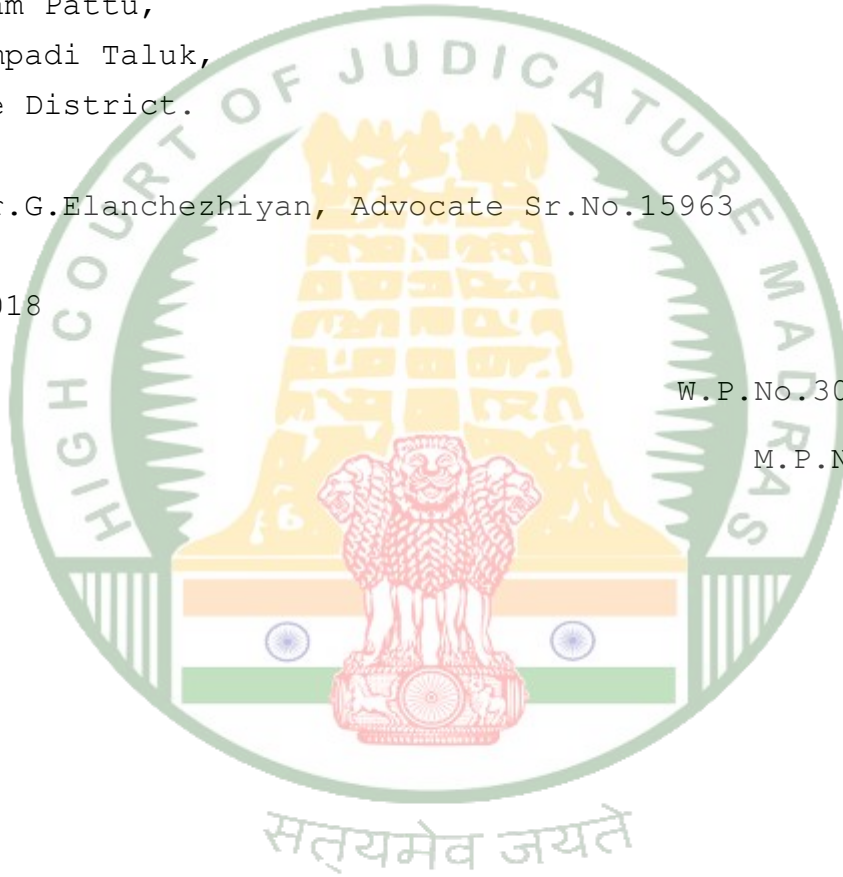
2.The Chief Educational Officer,
Vellore,
Vellore District.

3.The Headmaster,
Government Higher Secondary School,
Nimmiyam Pattu,
Vaniyampadi Taluk,
Vellore District.

+1cc to Mr.G.Elanchezhiyan, Advocate Sr.No.15963

sn:8.10.2018

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and
M.P.No.2 of 2008



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