

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.33769 & 33770 of 2017
and
W.M.P.Nos.37414 to 37416 of 2017
and
W.M.P.nos.7818 & 7819 of 2018

P.Suganthi ..Petitioner in W.P.No.33769 of 2017
S.R.Parasuraman ..Petitioner in W.P.No.33770 of 2017

vs

- 1.The Government of Tamil Nadu,
Rep.by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort.St.George,
Chennai - 600 009.
- 2.The Chief Educational Officer,
Salem District,
Salem.
- 3.The Headmaster,
Government Higher Secondary School,
Kannankurichi,
Salem - 636 008. .. Respondents in both W.Ps

Prayer in W.P.No.33769 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records of the 3rd respondent relating to his orders in Pro.Na.Ka.No.108(3)/2016 dated 02.11.2017 and to quash the same and to direct the respondents to refund the amount recovered from the Petitioner.
Prayer in W.P.No.33770 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records of the 3rd respondent relating to his orders in Pro.Na.Ka.No.108(2)/2016 dated 27.11.2017.

For Petitioners: Mr.M.Ravi(in both W.Ps)

For Respondents: Mr.K.Karthikeyan, GA(in both W.Ps)

C O M M O N O R D E R

The relief sought for in respect of W.P.No.33769 of 2017 is to call for the records of the 3rd respondent relating to his orders in Pro.Na.Ka.No.108(3)/2016 dated 02.11.2017, quash the same and to direct the respondents to refund the amount recovered from the Petitioner and the relief sought for in respect of W.P.No.33770 of 2017, is to call for the records of the 3rd respondent relating to his orders in Pro.Na.Ka.No.108(2)/2016 dated 27.11.2017.

2.The learned counsel appearing on behalf of the writ petitioners made a submission that in respect of W.P.No.33769 of 2017, the writ petitioner was initially appointed as Block Development Instructor by the Tamil Nadu Teachers Recruitment Board and subsequently, posted as Graduate Teacher (Maths) in the 3rd respondent School and thereafter, she obtained M.Phil (Mathematics) Degree and in respect of W.P.No.33770 of 2017, the writ petitioner was initially appointed as Junior Secondary Grade Teacher by the Tamil Nadu Teachers Recruitment Board and subsequently, posted as Graduate Teacher (Science) in the third respondent School, and thereafter, he obtained M.Phil (Science) Degree.

3.The grievances of the writ petitioners are that on acquisition of additional educational qualification, incentive increment can be granted in accordance with the Government Orders, however, the incentive increment though granted by the authority competent, later came to be cancelled through the impugned order and the excess payment was also sought to be recovered. Thus, the petitioners are constrained to move the present writ petitions.

4.The issue in relation to the grant of incentive increment to the teachers working in the Educational Department on acquisition of additional educational qualification, has been decided by the Hon'ble Division Bench of this Court in Writ Appeal No.1664 of 2016 and the Judgment was delivered on 29.06.2018.

5.The Hon'ble Division Bench of this Court has considered the relevant Government orders and observed as under in paragraphs 5 to 8 which are extracted as under:

"5. Mr.K.Karthikeyan, learned Government Advocate would contend that in view of G.O.Ms.No.1024 dated 09.12.1993, which restricts the maximum number of incentive increments to two and in view of the fact that the respondent had already been granted two incentive increments, which is equivalent

to four advance increments, the respondent will not be entitled any further incentive increment during the period of his service. A copy of the said G.O. dated 09.12.1993 has been produced before us, the relevant portion of the G.O. reads as follows:

The maximum number of advance increments which a Teacher can get under the Scheme of incentive increments under this Government Order shall be four in his entire service. (one incentive increment is equivalent to two advance increments). The said position was clarified by the Government in G.O.Ms.285, School Education Department dated 28.11.2007, which reads as follows:

As per the policy decision of the Government, two incentives (four increments) only may be granted to the teachers for the entire period of their service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed. qualification during his service as Post Graduate Teachers and promoted to the Headmaster Post and after the promotion as Headmasters, on acquiring M.Phil/Ph.D/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O. is ordered."

6. Of course, the respondent in his affidavit filed in support of the Writ Petition has referred to certain Government Orders as well as the Orders of this Court granting a third set of incentive increments to certain teachers. The said Government Orders have also been produced before us by the learned Government Advocate, those Government orders have been passed in particular cases, considering the peculiar circumstances of the case and the fact that the higher qualification in those cases are obtained, before 09.12.1993, i.e. the date on which the first G.O. i.e. G.O.Ms.No.1023 was passed restricting the number of incentive increments to a maximum of two, during the

service of the teacher. Therefore, we do not think that those Government Orders which have been passed taking note of certain special circumstances could be taken as precedents to enable the respondent to claim an incentive increment, which he would not be entitled to otherwise.

"7. The policy decision of the Government has been consistent to the effect that the teachers who acquire higher qualifications can be granted two incentive increments equivalent to four advance increments, during the entire tenure of their service. There is no dispute regarding the fact that the respondent has been awarded two incentive increments for acquiring B.Ed. and M.A. qualifications. Therefore, he cannot, as a matter of right, claim the third set of incentive increments for having obtained M.Phil qualification. We are therefore, unable to sustain the order of the learned Single Judge directing payment of third incentive increment to the respondent.

"8. For the foregoing reasons, the Writ Appeal is allowed and the Writ Petition No.22860 of 2014 will stand dismissed. However in the circumstances without costs. Consequently, the connected miscellaneous petitions are closed."

6.Having regard to the above, now, it is made clear that the Teachers including the writ petitioners, who acquired higher qualifications, can be granted two incentive increments equivalent to four advance increments, during the entire tenure of their service. Thus, the respondents are bound to follow the Government order referred to in the Judgment as well as the above said decision of the Hon'ble Division Bench, for the purpose of grant of the incentive increments to the writ petitioners.

7.It is made clear that if any excess payment was paid, it is left open to the authorities to recover the same in accordance with law.

8.With these directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Government of Tamil Nadu,
Rep.by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort.St.George,
Chennai - 600 009.
- 2.The Chief Educational Officer,
Salem District,
Salem.
- 3.The Headmaster,
Government Higher Secondary School,
Kannankurichi,
Salem - 636 008.

+2cc to Mr.Ravi, Advocate sr.no.46657 & 46656
+1cc to Government Pleader sr.no.46191

W.P.Nos.33769 & 33770 of 2017

nr 31/07/2018

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