

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2018

CORAM

The Honourable Mr. Justice S.M.SUBRAMANIAM

W.P.No.20923 of 2016
and
W.M.P.No.17924 of 2016

A.Rani ...Petitioner

Versus

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
Chennai-6.
- 3.The Financial Advisor and Chief Accounts Officer,
Directorate of School Education,
Chennai-6.
- 4.Jaigopal Garodia Government High School,
Thiruvottiyur,
Chennai-19. ... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the second, third and fourth respondents pertaining to the cancellation of incentives granted to the petitioner from 1.12.2006, for acquiring higher qualification and quash the Audit Report of the third respondent dated 24.11.2015 bearing Na.Ka.No.1053/A2/2015 and the subsequent impugned letters dated 9.2.2016, 16.3.2016 vide Na.Ka.No.48/2015-16 and 5.4.2016 vide Na.Ka.No.58/2015-16, issued by the fourth respondent herein and direct the respondents not to initiate any action to deduct the incentives granted from 1.12.2006, from the salary and further direction to grant the opportunity of hearing to the petitioner.

For Petitioner : Mr.S.Makesh
For Respondents-1to3 : Mr.M.Elumalai,
Government Advocate.
For Respondent-4 : No Appearance

O R D E R

The order of cancellation of incentive increment issued by the fourth respondent in proceedings dated 16.03.2016, is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner joined as B.T Assistant on 1.12.2006 in the fourth respondent-School, possessing the qualification of M.A in Sociology. The grievance of the writ petitioner is 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 writ petitioner is constrained to move the present writ petition.

3. 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.

4. 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."

5. 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 petitioner.

6. In this view of the matter if already two incentive increments are granted, the writ petitioner is entitled for further two incentive increments in her service, as per the Government order and as per the Hon'ble Division Bench. 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.

7. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

svn
To

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
 - 2.The Director of School Education,
Chennai-6.
 - 3.The Financial Advisor and Chief Accounts Officer,
Directorate of School Education,
Chennai-6.
- +1cc to the Government Pleader, S.R.No.49432

BS (CO)
EU/03.08.2018

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