

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Tuesday, the Thirtieth day of January Two Thousand Eighteen

PRESENT

THE HON`BLE MR.JUSTICE T.RAJA

WP No.1800 of 2018

and WMP No.2224 of 2018

M.JAYANTHI, [PETITIONER IN BOTH THE PETITIONS]
HEADMASTER, PANCHAYAT
UNION MIDDLE SCHOOL, B.SHANTHI NAGAR,
ALAMATHI POST, SENGUNDRAM, CHENNAI-600 052.

Vs

1 THE DISTRICT ELEMENTARY [RESPONDENTS IN BOTH THE
EDUCATIONAL OFFICER, THIRUVALUR DISTRICT, PETITIONS]
THIRUVALLUR.

2 THE ASSISTANT ELEMENTARY
EDUCATIONAL OFFICER, CHOZHAVARAM UNION,
THIRUVALLUR DISTRICT.

Writ Petitions under article 226 of the Constitutions of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

(1)issue a Writ of Certiorarified Mandamus or any other appropriate writ, or order or directing in the nature of a Writ calling for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka. No.14/A1/ 2018 dated 08.01.2018 and to quash the same and consequently directing the respondents to continue to pay the incentive increment to the petitioner for acquiring B.Ed., degree(in WP.1800/2018) and

(2)To grant an order of interim stay staying the operation of the impugned proceedings issued by the 2nd respondent in Na.Ka. No.14/A1/ 2018 dated 08.01.2018 (in WMP.2224/2018) respectively pending WP.No.1800 of 2018.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.G.SANKARAN, Advocate for the petitioner and of MRS.P.RAJALAKSHMI ADDL.GOV.T.PLEADER on behalf of the Respondents the court made the following order:-

The petitioner was sanctioned with incentive increment for having qualified B.Ed., degree from 02.07.2014. After four years, the Assistant Elementary Educational Officer, Chozhavaram Union, Thiruvallur District, the 2nd respondent herein has passed the impugned order dated 08.01.2018 to recover the incentive increment already paid to the petitioner. Assailing the same, the petitioner, who is serving as Headmaster of Middle School, has come to this Court on the ground that the impugned order is not only the clear violation of principles of natural justice, but also against their own G.O.Ms.No.107, Education Department, dated 20.01.1976, which says that the Tamil pandits Grade I is not required to possess B.T for initial appointment and Grade II Tamil Pandits may be allowed two sets of incentive increments either for B.T or for M.A.

2.A mere perusal of the impugned order shows that the the petitioner was sanctioned with two incentive increments for having qualified B.Ed., degree, however, after a lapse of four years, without any notice or calling for any explanation from the petitioner, the respondent department has not only stopped the payment of incentive increment, but also issued a direction to recover whatever the excess amount paid to the petitioner, in one lumpsum payment.

3.The learned counsel appearing for the petitioner would submit that initially the petitioner was appointed as Secondary Grade Teacher in Elementary Education on 19.12.1989 and then, after about 14 years, she was promoted as Headmaster of Primary School in the year 2003. While serving as Primary School Headmaster, she had acquired B.Lit., degree during 2009 and thereafter, she had promoted to the post of Middle School Headmaster on 21.09.2011. While serving as Middle School Headmaster, she had completed B.Ed., degree during June, 2014.

4.The G.O.Ms.No.107, Education Department, dated 20.01.1976, makes it clear that the Tamil pandits Grade I are not required to possess B.T for initial appointment, however, Grade II Tamil Pandits may be allowed two incentive advance increments either for acquiring B.T or for M.A. Therefore, on the basis of the said G.O., the respondents have sanctioned incentive increment in favour of the petitioner for having acquired B.Ed., degree, in my considered view, after grant of the said benefits long time back, the respondents cannot now take a different stand stating that the petitioner is not entitled to enjoy the incentive increment, merely for the reason that she has acquired B.Ed., degree after becoming Headmaster of Middle School.

5.While considering the similar issue, this Court in an unreported judgment in WP (MD) Nos.21368 of 2014 and 4332 of 2015, held that the teacher, after becoming Middle School Headmaster, is entitled to get incentive increment for acquiring B.Ed., qualification, although the said B.Ed., degree is a required basic qualification for the appointment of Middle School Headmaster. The relevant portion is given as under:

"9.The case of the respondents in the counter affidavit is only to the effect that the petitioners, after becoming Headmistress of the Middles School, are not entitled to get incentive increments for acquiring B.Ed. Degree. It is contended that the petitioners acquired B.Ed., after becoming Middle School Headmistress and that since B.Ed., Degree is a required basic qualification for appointment of Middle School Headmistress, as clarified by the Director of Elementary Education, the petitioners are not entitled to incentive increment for acquiring B.Ed. Degree. In support of this, the proceedings of the Joint Director of Elementary Education, dated 07.11.2014 was relied upon.

10.In the present cases, the petitioners were working as Primary School Headmistress from 17.06.2003 and 23.07.2007 respectively. The petitioners also became Middle School Headmistress in 2007 and 2010, respectively. The fact that the petitioners were given incentive increment for acquiring B.Ed., qualification after this promotion as Middle School Headmistress is admitted and the clarification of second respondent reflect the correct position. In such circumstances, this Court is of considered opinion that the petitioners are entitled to get incentive increment for acquiring additional qualification as per the earlier proceedings of the Director of Elementary Education, dated 07.06.1991 and the same cannot be stopped or denied in view of the qualification prescribed later in the year 2013."

(emphasis supplied)

One another Judgement of this Court in WP.(MD)No.7595 of 2012, clearly covers the petitioner's case and the relevant portion is given as under:

"5.The combined appreciation of G.O.Ms.No.1024, dated 09.12.1993 and clarificatory G.O.Ms.No.107, School Education Department left no doubt in the mind of this Court that the Tmail Pandit who was promoted as Middle School Headmistress who obtained M.A., or B.Ed., degree is entitled to two incentives. The same is also allowed in respect of one Shanmugam of kovilpatti Nadar Middle School and the same is also clarified by the first respondent/District Elementary Educational Officer, Theni District in his proceedings dated 03.06.2009. As a matter of fact, in the proceedings issued in favour of one Shamugam, who is also similarly placed, it is stated clearly that the two incentives is allowed/sanctioned only to encourage the teachers to enhance their educational qualification to serve the students community

in a better manner. That being so, there is absolutely no reason for denial of the same benefit to the petitioner who is also similarly placed. The petitioner herein also acquired additional qualifications after having been promoted to the post of Middle School Headmistress with the requisite qualification already possessed by her and by way of appreciation and encouragement of the same, she is entitled to the incentive increment as prayed by her in this Writ Petition and the denial of the same by way of impugned order is contrary to the Government Orders above cited and the impugned order is contrary to the Government orders above cited and the impugned order is passed on non-application of mind and is hence not sustainable in law.

6. In the result, the Writ Petition is allowed and the impugned order in question stands quashed and the respondents are directed to grant incentive increment to the petitioner for acquiring B.Ed., degree from the relevant date. The above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs."
(emphasis supplied)

6. At this stage, the learned Additional Government Pleader appearing for the respondents fairly agreeing with the settled legal position, and also drawing the notice of this Court in G.O.Ms.No.107, Education Department, dated 20.01.1976, submitted that what was sanctioned to the petitioner is only an incentive increment for having qualified B.Ed., degree and therefore, the same cannot be discontinued.

7. When the issue of whether a teacher after becoming middle school Head Master is also entitled to get incentive increment, has already been settled in the above stated judgments, the present impugned proceedings cancelling the incentive increments granted to the petitioner is liable to be set aside. Accordingly, it is set aside.

8. Since the respondent, without issuing any notice for recovery, has passed the impugned proceedings to recover the incentive increment paid to the petitioner, that too, forgetting their own G.O.Ms.No.107, Education Department, dated 20.01.1976, which grants two incentive increments to those persons for acquiring B.Ed. Degree, this Court hereby issues notice to the Respondents to show cause why this Court can not impose costs of Rs.25,000/- payable to the Mediation Centre attached with this High Court, for such lapse on their parts.

Post this matter on 15.02.2018.

-sd/-
30/01/2018
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT ELEMENTARY
EDUCATIONAL OFFICER, THIRUVALLUR DISTRICT,
THIRUVALLUR.

2 THE ASSISTANT ELEMENTARY
EDUCATIONAL OFFICER, CHOZHAVARAM UNION,
THIRUVALLUR DISTRICT.

C.C. to M/S.G.SANKARAN Advocate SR.NO.1163

Order

in
WP.1800/2018

and WMP.2224/2018

Date :30/01/2018

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
VS 13.02.2018