

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.09.2018

CORAM

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

W.P.Nos.12594 of 2017 & 14555 of 2017

and

WMP.Nos.13401 to 13403 of 2017

W.P.No.12594 of 2017

1. M.Tamilmani

2. R.Anandhavel

3. P.Karuppasamy

4. R.Vidhya

5. T.Jayalakshmi

6. V.Premanandh

7. V.Amala

... Petitioners

vs

1. The State of Tamil Nadu,
Rep by its Principal Secretary to Government,
School Educational Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

.. Respondents

W.P.No.14555/2017

B.Uma Maheswari

...Petitioner

Vs

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1 The State of Tamil Nadu
rep by Principal Secretary to Government
School Education Department Secretariat
Fort St. George Chennai-09

- 2 The Director of School
Education DPI Campus College Road
Chennai-06
- 3 The Joint Director of School
Education (Vocational) Directorate of
School Education DPI Campus College Road
Chennai-06
- 4 The Chief Educational
Officer Kancheepuram District Kancheepuram
- 5 The Headmaster
Government Higher Secondary School
Anakaputhur Chennai-70 ...Respondents

Prayer in W.P.No.12594 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceeding of first respondent in Government Letter No.5918/G2/2011-1 School Education Department dated 06.04.2011 and second respondent in Mu.mu.No.040285/13/2010 dated 18.04.2011 and the proceeding of second respondent in Na.Ka.No.016268/I2/2016 dated 30.01.2017 and to quash the same and consequently direct the respondents to pass orders for sanctioning incentive increment for the petitioners directly recruited to the post of Assistant Elementary Educational Officer through Teacher Recruitment Board, from the date of acquiring higher qualification or from the date of appointment with arrears along with interest within a time frame.

Prayer in W.P.No.14555 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to pass orders sanctioning incentive increment to the petitioner for having acquired the degree in MBA (Sport Management) from Tamil Nadu Physical Education and Sports University with effect from May 2010 as per G.O.Ms.No.324, Education, Science and Technology Department dated 25.04.1995 and subsequent Government Order issued in G.O.Ms.No.117, School Education [Pa.Ka.5(2)] Department dated 13.10.2016 along with arrears including interest for belated payment.

For Petitioners in both petitions: Mr.G.Shankaran
For Respondents in both petitions : Mr.K.Karthikeyan
Government Advocate

C O M M O N O R D E R

WP.No.12594 of 2017:

The relief sought for in this writ petition is to call for the records relating to the proceedings of the respondents 1 and 2 and to quash the same and consequently direct the respondents to pass orders for sanctioning incentive increment for the petitioner directly recruited to the post of Assistant Elementary Educational Officer through Teacher Recruitment Board, from the date of acquiring higher qualification or from the date of appointment with arrears along with interest within a time frame.

1.2. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was appointed as Assistant Elementary Educational Board through Teacher Recruitment Board on 07.12.2009.

WP.No.14555 of 2017:

1.3. The relief sought for in this writ petition is for a direction directing the respondents to pass orders sanctioning incentive increment to the petitioner for having acquired the degree in MBA (Sports Management) from Tamil Nadu Physical Education and Sports University with effect from May 2010 as per G.O.Ms.No.324, Education, Science and Technology Department dated 25.04.1995 and subsequent Government Order issued in G.O.Ms.No.117, School Education [Pa.Ka.5(2)] Department dated 13.10.2016 along with arrears including interest for belated payment.

1.4. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was appointed as Physical Education Teacher in School Education on 09.02.2005 through Employment Exchange.

2. 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. Further, the petitioners has also submitted an application for sanctioning incentive increment for having acquired the additional qualification. However, the same has not been considered by the respondents. Thus, the petitioners are constrained to move the present writ petitions.

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 Nos.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 petitioners are not entitled for further two incentive increments in their 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 petitions stands disposed of. However, there shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

sk

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
School Educational Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

+2cc to M/s.G.Sankaran, Advocate SR.NO.68039, 68040
+2cc to Government Pleader SR.NO.67808, 67854

GP(CO)

sm:13.11.2018

W.P.Nos.12594 of 2017
& 14555 of 2017

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