



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.290 of 2018

and

WMP (MD) No..315 of 2018 and 2751 of 2018

T.P.Thiraviyaraj

... Petitioner

Vs.

1. The Director of School Education,
(Higher Secondary),
E.V.K.Samath Building,
D.P.I.Campus, College Road,
Nungambakkam, Chennai - 6.

2. The Divisional Accounts Officer (Audit),
School Education Department,
Madurai-2.

3. The Chief Educational Officer,
Chief Educational Office Campus,
Nagercoil, Kanyakumar District.

4. The Head Master,
Government Higher Secondary School,
Agastheeswaram,
Kanyakumari District.

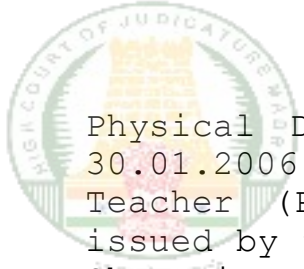
... Respondents

Prayer: Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the fourth respondent in Na.Ka.No.201/2017 dated 13.11.2017 and quash the same and consequently directing the respondents to give all monetary and service benefits to the petitioner.

For petitioner : Mr.H.Arumugam

For Respondents : Mrs.S.Srimathy,
Special Government Pleader

ORDER



Physical Director Grade-I on consolidated pay of Rs.4,500/- on 30.01.2006. He was regularized in service as Post Graduate Teacher (Physical Education) vide proceedings dated 22.01.2007 issued by the Joint Director of School Education(Higher Secondary) Chennai. The petitioner acquired M.Phil degree in the year 2009. G.O.Ms.No.1170, Education, Science and Technology Department dated 20.12.1993 states that Post Graduate Teachers who possess higher qualification like M.Phil shall be granted one incentive increment.

2.G.O.Ms.No.1170 dated 20.12.1993 was clarified by G.O.Ms.No.324 dated 25.04.1995. The subsequent G.O states that for sanction of incentive increment subjects in higher secondary syllabus shall be relevant subjects for the purpose of sanctioning incentive increments. In respect of Physical Education Teachers, they would be eligible for incentive for higher qualification only in Physical Education.

3.In the present case, it is not in dispute that the petitioner herein acquired higher qualification only in physical education. Considering these aspects, the petitioner was granted an incentive increment.

4.The same is now sought to be reviewed in view of the audit objection. The audit objection is to the effect that in view of the issuance of G.O.Ms.No.177 School Education Department dated 13.10.2016, the petitioner can be granted incentive increment only from the date of issuance of G.O.Ms.No.177. Therefore, the incentive earlier granted is sought to be recalled. The petitioner has been directed to remit the arrears of such increment amounts already received by him.

5.The learned counsel appearing for the petitioner contended that the writ petitioner was rightly granted incentive increment earlier and that therefore the order directing recovery as well as re-fixation of his pay will have to be quashed.

6.Per contra, the learned Special Government Pleader appearing for the respondents contended that there is a distinction between the Physical Education Teacher and Physical Director and that only the Physical Education Teachers could have been granted incentive increment for acquiring higher qualification and the petitioner being a Physical Director was not eligible to be conferred with such a incentive increment.

7.This Court is of the view that the distinction sought to be made between the Physical Education Teacher and Physical Director would not help to resolve the issue on hand. The question that is to be resolved is whether the petitioner can be considered as a Post Graduate Teacher or not. A mere look at the order dated



22.01.2007 regularizing the services of the petitioner would show that the petitioner was appointed as Post Graduate Teacher. For Post Graduate Teachers acquiring higher qualification incentive increment were allowed.

8. The issue on hand is covered by more than one decision of this Court. The learned counsel for the petitioner placed reliance on the order dated 17.10.2014 rendered in WP(MD)No.17025 of 2014 and the order dated 28.06.2017 in WP(MD)No.7092 of 2016. In the typed set of papers, the learned counsel for the petitioner had enclosed an order dated 12.06.2009 made in WP(MD) No.1890 of 2009. The direction given by this Court was duly implemented by the department by issuing appropriate Government orders. It is not in dispute that the cases relied on by the petitioner's counsel govern the case on hand also. Therefore, the petitioner being a Post Graduate Teacher was certainly entitled to such incentive increment. That he was appointed as a Physical Director from the very beginning is not of any relevance. What matters is whether he is holding the Post Graduate Teacher post or not. Once it is seen that he is a Post Graduate Teacher, the irresistible inference is that the impugned order has to go. Therefore, the order impugned in the writ petition is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Director of School Education,
(Higher Secondary),
E.V.K.Samath Building,
D.P.I.Campus, College Road,
Nungambakkam, Chennai - 6.
2. The Divisional Accounts Officer (Audit),
School Education Department,
Madurai-2.
3. The Chief Educational Officer,
Chief Educational Office Campus,
Nagercoil, Kanyakumar District.



4. The Head Master,
Government Higher Secondary School,
Agastheeswaram,
Kanyakumari District.

WEB COPY

+1cc to Mr.H.Arumugam, Advocate SR.No.48070
+1cc to The Spl. Government Pleader Sr.No.48591

SKM

VB/MMS/SAR4/06.08.2018/4P/7C

W.P. (MD) No.290 of 2018

and

WMP (MD) No..315 of 2018 and 2751 of 2018

12.02.2018