



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2018

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.9209 of 2018

A.Kulandaisamy

: Petitioner

Vs.

1. The District Elementary Educational Officer,
Sivagangai District.

2. The Assistant Elementary Educational Officer,
Illayankudi,
Sivagangai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in his proceedings in A.Thi.Mu.No.750/A1/2017 dated 19.02.2018 and quash the same and direct the respondents to sanction incentive increment for the higher qualification of M.Phil., to the petitioner.

For Petitioner : Mr.V.Panneer Selvam

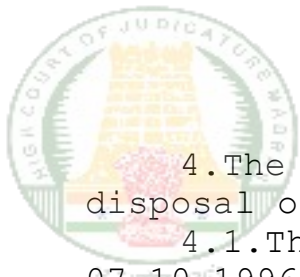
For Respondents : Mr.D.Muruganantham
Additional Government Pleader

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in his proceedings in A.Thi.Mu.No.750/A1/2017 dated 19.02.2018 and quash the same and direct the respondents to sanction incentive increment for the higher qualification of M.Phil., to the petitioner.

2.Heard Mr.V.Panneer Selvam, learned Counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents.

3.By consent, the writ petition is taken up for final disposal at the admission stage itself.



4.The short facts which are required to be noticed for the disposal of this writ petition are as follows:

4.1.The petitioner was appointed as Secondary Grade Teacher on 07.10.1996. He was further promoted as Elementary School Head Master on 30.09.2002. While so, he passed B.Lit., M.A. And B.Ed. As per the scheme, those who acquire additional qualification would be given incentive increment for each of such qualification separately.

4.2.The petitioner was subsequently promoted as Tamil Pandit on 22.12.2011 and he was further promoted as Middle School Head Master on 01.06.2017. In the meanwhile, he passed M.Phil., in the year 2016. In order to get incentive increment for the said M.Phil., degree acquired by the petitioner, the petitioner made a request on 04.12.2017. However, the second respondent returned the proposal on 19.02.2018, directing the petitioner to enclose the Government Order for third incentive increment and to get genuineness certificate for M.Phil., qualification.

5.Challenging the said order dated 19.02.2018, passed by the second respondent, the petitioner moved this writ petition with the aforesaid prayer.

6.The learned Counsel appearing for the petitioner would submit that the issue raised in this writ petition whether the petitioner would be entitled to get incentive increment for the M.Phil., degree acquired by him is no more *res integra* and in number of cases, the issue has been decided.

7.In view of the same, the rejection / return now made by the second respondent through the impugned order cannot be sustained.

8.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that, the petitioner, for other qualifications has already been given incentive increments. However, insofar as the further qualification by way of acquiring M.Phil., degree, he may not be entitled to seek for any incentive increment as there is no specific order enabling the respondents to allow the incentive increment to the petitioner for having acquired the qualification of M.Phil., degree.

9.This Court has considered the said submissions made by both sides.

10.The issue raised herein is not the particular degree for which, whether the petitioner is entitled to get the incentive increment or not. It is the issue whether the petitioner would be entitled to seek incentive increment as a third set of incentive increment for acquiring higher qualification.



11.As has rightly been pointed out by the learned Counsel appearing for the petitioner, the issue raised in this writ petition is no more *res integra*, as the same has been considered in many number of cases. In this regard, I had an occasion to consider the similar issue where the petitioner had sought for therein, third set of incentive increment for the higher qualification of M.A. degree acquired by him and when the said issue came up for consideration before this Court, in W.P.(MD) No.12430 of 2015, in the matter of **V.Appavoo Vs. The Assistant Director of Elementary Education (Administration), Chennai and others**, this Court by order dated 08.05.2017, after having gone through the issue in detail has ultimately held that the petitioner therein would be entitled to get the third set of incentive increment for the higher qualification acquired by him. In this regard, the relevant paragraphs of the said order referred to above, are extracted herein for easy reference:

"15.After considering the various issues and Government Orders in this regard by a very elaborate Judgment that the Division Bench of this Court has ultimately concluded that a teacher would be entitled to get any number of advance incentive increment for acquiring higher qualification and such claim can be made even after the retirement of the teacher concerned. The relevant portion of the order of the Division Bench of this Court in paragraph Nos.35 to 37 is extracted hereunder:-

35.Reverting back to the case on hand, it could be seen that the respondent/writ petitioner, in the post of Physical Education Teacher completed her B.A in 1980 and B.Ed in 1982. Considering her educational qualification, she has been granted two advance increments for B.Ed., on 29.12.1982. She has acquired M.A in the year 1985. She was posted as B.T Assistant in 1987. She has been granted two advance increments for acquiring M.A qualification in the post of B.T Assistant with effect from 20.07.1987. She has completed M.Ed., in the month of December 1987 much before 09.12.1993. Decisions in the Director of School Education Vs. S.Shanmugam (W.A.No.604 of 2005, decided on 03.04.2008) and P.B.Bheeman Vs. The Registrar (W.P.No.41451 of 2005, decided on 01.08.2008) can be made applicable to the present case.

36.Though both the cases relate to Tamil Pandits, the principle of law to be applied for grant of incentives for having higher qualifications in service, at the time of entry



into service or subsequently acquired, applies to a B.T teacher also. At this juncture, we wish to state that from the Government Orders referred to above, what is required to be considered is the educational qualifications possessed or acquired by a teacher. Now, when this Court has recognised the grant of advance incentive increment to a Tamil Pandit I, for possessing B.T qualification and when the Government have recognised the right of Tamil Pandit II, to seek for advance increments for acquiring B.T qualification, in the post of Tamil Pandit II, and further recognised the rights of both, to claim advance increments, after B.T., and M.A., separately and thereafter, for M.Ed., qualification, in terms of G.O.Ms.No.42, we are unable to understand as to how the Government could raise objections. The objections are untenable.

36.Though it is contended that during the period of service or reemployment, the writ petitioner has not made any claim for third incentive for M.Ed qualification, that would not curtail her right to claim after retirement. Entitlement to claim continues even after retirement.

37.For the reasons stated supra, we do not find any merit in the appeal. Accordingly, the Writ Appeal is dismissed. Appellants are directed to sanction and pay the arrears of incentive increment, to the Writ Petitioner for M.Ed degree qualification, within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs.

16.In view of the said pronouncement of a Division Bench of this Court, the objection raised by the respondents that the petitioner since has already acquired higher qualification for which she had already obtained two advance incentive increment and therefore she would not be entitled to get further advance incentive increment as the maximum incentive increment can be only two sets i.e., first and second increment, cannot be a acceptable argument, as the issue has been well settled by the said decision of the Division Bench of this Court.

17.In so far as the further argument of the learned Additional Government Pleader that the two



Government Orders, namely G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006 would not be made applicable to the case of the petitioner is concerned, even such objection in the opinion of this Court, may not be sustainable because in the two judgments relied on by the petitioner's side all these issues have been exhaustively discussed and decided. In a case of a Physical Education Teacher, the issue of grant of advance incentive increment for acquiring higher qualification has also been considered and decided in favour of the Teacher concerned. Also, a Tamil Pandit, as well as B.T Teacher has been considered for grant of advance incentive increment for acquiring higher qualification. Therefore the said argument that the relevant Government Orders namely G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006, would not be made applicable to the case of the petitioner is concerned, is also liable to be rejected as without the aid of the said Government Orders the petitioner can independently claim the third set of advance incentive increment for acquiring the higher qualification, namely, M.Phil degree. The only aid that the petitioner can take it from G.O.Ms.No.194, School Education Department dated 10.10.2006 is that the hurdle created in G.O.Ms.No.1170, Education Department dated 20.12.1993 by putting a cut of date 01.03.1993 since has been removed or deleted by G.O.Ms.No.194, School Education Department dated 10.10.2006, at paragraph No.4. Therefore on that score it cannot be said that only on the strength of G.O.Ms.No.1170, Education Department dated 20.12.1993 as well as G.O.Ms.No.194, School Education Department dated 10.10.2006 alone the petitioner is claiming her advance incentive increment for acquiring the qualification of M.Phil as a third set of incentive increment. Therefore all the contentions raised by the respondents' side, since has been covered by the said decisions of this Court, as has been referred to above, are liable to be rejected. Therefore, accordingly they are rejected."

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Having considered the said issue in detail, of course, following the earlier judgments, including the Division Bench judgment referred to therein, I have allowed the said writ



petition by giving a direction to the respondents to give the third set of incentive increment to the petitioner therein on his acquiring a higher qualification.

13. In the case on hand also the petitioner has already availed two sets of incentive increments and after having acquired M.Phil., degree he has requested for third set of incentive increment, which has been refused/rejected/returned by the impugned proceedings of the second respondent. Therefore, the said rejection order, in the light of the law laid down by this Court in a number of cases, shall not stand and therefore, the said order is liable to be quashed. Accordingly, it is quashed.

14. In the result, this Court is inclined to pass the following directions:

14.1. The impugned order is quashed.

14.2. The respondents are directed to consider the request made by the petitioner for grant of third set of incentive increment for acquiring his qualification of M.Phil., degree from the date on which he acquired the said qualification and calculate the said incentive increment and disburse the same to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above directions, the writ petition stands disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The District Elementary Educational Officer,
Sivagangai District.
2. The Assistant Elementary Educational Officer,
Illayankudi, Sivagangai District.

+ 1 CC TO Mr.V.PANNEER SELVAM, ADVOCATE IN SR No. 64308
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 64480

MR

TE/SV/SAR-2 : 22/11/2018 : 6P/5C