



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2018

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P. (MD) No.13423 of 2018

WEB COPY

M.Prem Kumar

... Petitioner

-vs-

1. The Principal Secretary to
Government of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai.

2. The Director of School Education,
College Road,
Chennai.

3. The District Elementary Educational Officer,
Pondy Bazaar, Madurai.

4. The Block Educational Officer,
Melur Taluk,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a WRIT OF MANDAMUS direct the respondents to sanction 3rd incentive increment for possessing M.Phil., to the petitioner in the light of the orders of this Honourable Court in WP (MD)No.11802 to 11806 of 2013 in the light of G.O.Ms.No.15, School Education (J) Dept., dated 28/03/2018 at once.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.K.Saravanan,
Government Advocate

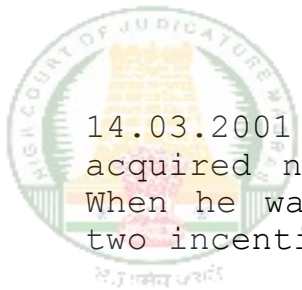
ORDER

The prayer sought for in this writ petition is for a Writ of Mandamus, directing the respondents to sanction third incentive increment for possessing M.Phil., to the petitioner in the light of the orders of this Court in W.P.(MD)Nos.11802 to 11806 of 2013 in the light of G.O.Ms.No.15, School Education (J) Dept., dated 28/03/2018 at once.

2. Heard Mr.P.Ganapathi Subramanian, learned Counsel appearing for the petitioner as well as Mr.K.Saravanan, learned Government Advocate, who takes notice for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The petitioner was appointed as Secondary Grade Teacher on



14.03.2001 and was subsequently, promoted as B.T.Assistant, since he acquired necessary qualification to that effect, from 26.06.2006. When he was working as Secondary Grade Teacher, he had been given two incentive increments for having acquired higher qualification.

4. The petitioner also acquired M.Phil., qualification and therefore, for the said higher qualification acquired by the petitioner, the petitioner had requested for third incentive increment to the respondents. The said request of the petitioner, which was made in July'2017, had been returned by a return memo dated 06.09.2017, by the fourth respondent. In the said return memo, the fourth respondent has stated that i) it is returned; and ii) after getting necessary Government Orders, the request of the petitioner would be considered.

5. The learned Counsel for the petitioner would submit that, with regard to the entitlement of getting third incentive increment, number of orders have been passed by this Court and the petitioner, since also is entitled to get the third incentive increment, had rightly applied for the same and the same should have been considered objectively by the third respondent, who is the competent authority, instead of the fourth respondent, who sent the return memo, which is highly unjustifiable.

6. Mr.K.Saravanan, the learned Government Advocate appearing for the respondents, would submit that, it is only a return memo, however, it has not been challenged and the issue is also pending before the Division Bench of this Court and for all these reasons, the prayer now sought for by the petitioner cannot be granted.

7. I have heard the said submissions made by both sides and perused the records carefully.

8. Since it is the claim of the petitioner that he is entitled to get the third incentive increment and he has made a request to that effect, it is for the competent authority to decide the same on merits and to pass orders thereon. In that case, if the petitioner is entitled to get the third incentive increment, he should be granted with the same, otherwise, the competent authority may pass a reasoned order as to how and why the petitioner is not entitled to get the third incentive increment. Here, in the case on hand, the third respondent is the competent authority, who alone shall pass orders, however, the fourth respondent, without forwarding the request of the petitioner to the third respondent for approval, had returned the same by himself on 06.09.2017, which, in the opinion of this Court, is not acceptable, because, no plausible reason has been given in the return memo, as it has been only stated that after getting necessary Government Orders, the request of the petitioner will be considered.

9. What is the Government Order that prevails and based on which, whether the petitioner is entitled to get the third incentive



increment or not, has to be decided by the competent authority after considering the request of the petitioner and without which, this kind of cryptic reasons cannot be given by a lower level officer by returning the proposal without even forwarding the same for proper consideration by the competent authority. This kind of cryptic orders passed by the lower level officers unnecessarily create litigations and therefore, the lower level officers must be very careful before passing this kind of orders, even by way of return memos. If at all, the fourth respondent is very firm and sure that there are Government Orders which are prohibiting the grant of third incentive increment, that must be quoted and by quoting the same, the proposal or request should be forwarded to the competent authority, ie., the third respondent, who shall alone consider the same and pass appropriate orders.

10. Without doing this right course of action, the lower level officer, ie., the fourth respondent, indiscriminately passed this kind of order and returned the memo at the threshold, that too without any plausible reason and therefore, this kind of attitude on the part of the fourth respondent cannot be approved and in fact, it is to be deprecated.

11. In that view of the matter, this Court is inclined to dispose of the writ petition, with the consent of both sides at the admission stage itself, with the following directions:-

"that the petitioner is at liberty to resubmit the request to the third respondent, directly and on receipt of the same, the third respondent shall consider the same on merits and in accordance with law as per the present rules / Government Orders that prevail in this regard and pass a reasoned order. It is made clear that if there is no express prohibition for granting third incentive increment to the petitioner by any statute / rule / Government Order, the same shall be considered objectively and necessary orders to that effect shall be passed for granting such incentive increment to the petitioner. The needful as indicated above shall be undertaken by the third respondent within a period of four weeks from the date of receipt of re-submission of application by the petitioner. There shall no be order as to costs."

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

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Government of Tamil Nadu,
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4. The Block Educational Officer,
Melur Taluk,
Madurai District.

+1cc to Mr.P.Ganapathi Subramanian ,Advocate Sr.No.70140

+1cc to SPL.Govt.Pleader, Sr.No.69773

GK

KM/SV/SAR1/26.12.2018/2P/7C

W.P. (MD) No.13423 of 2018
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