



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.17168 of 2018

and

W.M.P. (MD) No.15106 and 15107 of 2018

P.B.Vinodh

... Petitioner

Vs.

1. The State of Tamilnadu,
represented by its Secretary,
Department of School Education
Fort St.George, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 006.

3. The Chief Educational Officer,
Kanyakumari District,
Nagercoil-629 001.

4. The District Educational Officer,
Thuckalay, Kanyakumari District.

5. The Secretary,
Devaswom Higher Secondary School,
Mondaikadu-629 252
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in O.Mu.No.3440/A2/2016 dated 22.02.2018, quash the same and further direct the respondents to sanction third incentive increment to the petitioner for acquiring M.Phil., Degree from the date of joining as PG Assistant in Tamil ie., 05.06.2002.

For Petitioner : Mr.S.Xavier Rajini

For R1 to R4 : Mr.M.Murugan
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorari and Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent, District Educational Officer in O.Mu.No.3440/A2/2016 dated 22.02.2018 and quash the same and further direct the respondents to sanction third incentive increment to the petitioner for acquiring M.Phil., degree from the date of joining as PG Assistant in Tamil ie., 05.06.2002.

2. Heard, Mr. S.Xavier Rajini, learned counsel for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 to 4.

3. Since, no adverse order is going to be passed against the fifth respondent, notice to the fifth respondent is hereby dispensed with.

4. The learned counsel appearing for the petitioner would submit that, the petitioner has been working as PG Assistant (Tamil) in the fifth respondent School. The petitioner already acquired qualification of M.A., and M.Ed., and for the said qualification, while he was working as BT Assistant, he obtained two set of incentive increment for such additional qualification. Thereafter, he was promoted as PG Assistant and he acquired the qualification of M.Phil also. For the said additional qualification of M.Phil, he sought for a third set of incentive increment, which was rejected vide the impugned order of the fourth respondent dated 22.02.2018. Challenging, the same, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that the issue of grant of third set of incentive increment for the additional qualification, has already been considered in number of cases by this Court and in this regard, he relied upon a decision of this Court, wherein, this Court had an occasion to consider the similar issue in W.P.(MD)No.8339 of 2018 in **Shanthi Vs The State of Tamil Nadu, represented by its Secretary, Department of School Education, Fort St.George, Chennai-600 009 and others**, dated 19.04.2018, where I have passed the following order:

"6. I have heard Mr.M.Murugan, learned Government Advocate appearing for the official respondents, in this regard, who would submit that the issue raised in this writ petition is covered by the said decision of this Court.

7. In the said decision cited above, after having analysed the issue, this Court has passed the following order.



"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.

18. In the result, this Court is of the view that the petitioner's request for grant of third advance incentive increment for acquiring M.Phil degree qualification can very well be considered by the respondents.

19. Accordingly, the following orders are passed in this Writ Petition:-



(i) The third respondent is directed to consider the request of the petitioner, dated 06.10.2014 seeking for third advance incentive increment for acquiring M.Phil qualification from 02.04.2009.

(ii) Since the representation of the petitioner is dated 06.10.2014, a copy of the same shall be forwarded by the petitioner to the third respondent along with the copy of the Writ Appeal Judgment in W.A(MD)No.867 of 2014 immediately within a period of one week from the date of receipt of a copy of this order.

(iii) On receipt of the same, while making consideration of the representation of the petitioner, the third respondent shall take into account the Division Bench Judgment of this Court in W.A(MD)No.867 of 2014, dated 18.09.2014 and pass orders for grant of third advance incentive increment for the petitioner for the aforesaid qualification of M.Phil degree from the said date ie., 02.04.2009 and accordingly calculate the pay and arrears payable to the petitioner and pay the same within eight weeks thereafter.

(iv) With these directions, this Writ Petition is disposed of. No costs.

8. In view of the settled legal position that the Teacher, who acquired higher qualification would be entitled for incentive increment and in very many other cases, such incentive increment for acquiring higher qualification, as acquired by the petitioner, was granted. Therefore, no doubt, the petitioner would be eligible for the incentive increment, which shall not be rejected / refused by the respondents.

9. In view of the above, this Court is of the view that, the impugned order shall not stand in the legal scrutiny and therefore, it is liable to be quashed. Accordingly, the impugned order is quashed. And there shall be a direction to the respondents to sanction the incentive increment to the petitioner for having acquired the higher qualification, namely M.A. (History) with effect from 06.09.2009 and the monetary benefits shall be calculated thereon and be paid to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is allowed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

<https://hcservices.courts.gov.in/hcservices/> 6. By relying upon the said order and other similar orders, the learned counsel for the petitioner would submit that the impugned order cannot be sustained.



7. I have heard, Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 to 4, who would submit that the impugned order was passed on the pretext that the petitioner had acquired the third additional qualification at the earliest and on that presumption, the impugned order was passed.

8. Be that as it may, since the entitlement of the petitioner to get third incentive increment for the additional qualification of M.Phil., can no longer be an issue, since the same has been considered in number of cases and in the case referred to above also, the issue has been considered in detail. Since, similarly placed persons have been considered for the third incentive increment for the higher qualification, the same shall not be refused to the petitioner. Therefore, in that view of the matter, this Court is of the view that the impugned order cannot be sustained.

9. In the result, the impugned order is quashed and the matter is remitted back to the respondents, with a direction to consider the request of the petitioner, for grant of third incentive increment for the higher qualification, that was acquired by the petitioner (M.Phil., degree) and such benefit shall be extended to the petitioner, from the date, he acquired the said degree and the needful shall be undertaken by the respondents, within a period of six weeks from the date of receipt of a copy of this order.

10. With this direction, this writ petition is ordered. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Secretary,
State of Tamilnadu,
Department of School Education
Fort St.George, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 006.

3. The Chief Educational Officer,
Kanyakumari District,
Nagercoil, Kerala-629 001.



4. The District Educational Officer,
Thuckalay, Kanyakumari District.

+1cc to Mr.S.Xavier Rajini, Advocate Sr.No.77121

+1cc to Spl.Government Pleader Sr.No.77258

PNN

VB/KAK/SAR1/31.08.2018/6P/7C

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