



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2018

CORAM:

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.A.[MD]No.1532 of 2018
Against in WP(MD)12430 of 2015
and
C.M.P.[MD]No.10899 of 2018

1. The Assistant Director of Elementary Education,
(Administration),
Office of the Director of Elementary Educational
Officer, Chennai-600 006.
2. The District Elementary Educational Officer,
Dindigul, Dindigul District.
3. The Assistant Elementary Educational Officer,
Vedasandhur, Dindigul District. : Appellant/Respondents

Vs.

V.Appavoo : Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 08.05.2017, made in W.P.(MD)No.12430 of 2015.

Prayer in WP(MD). 12430/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to calling for the records from the respondents in their proceedings in Oo.Mu.No.1051/A1/2015 dated 23.01.2015 Oo.Mu.No.653/Aa4/2015 dated 22.02.2015 & Na.No.16124/E4/2015 dated 30.06.2015 respectively and quash the same and consequently direct the respondents to grant 1 set of 3rd incentive increment to the petitioner for acquiring M.Ed., by calculating the arrears from the date of his qualification (i.e.) April 1993.

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

For Respondent : Mr.N.Sathish Babu

**J U D G M E N T**

[Judgment of the Court was delivered by **K.K.SASIDHARAN, J.**]

The claim made by the respondent for the grant of third incentive increment for acquiring the qualification in M.Ed., was allowed by the learned Single Judge. Feeling aggrieved, the State has come up with this intra-Court appeal.

2. The respondent was appointed as a Secondary Grade Teacher on 01 August, 1964. He was posted at Panchayat Union Middle School, Viveswaram, Vedasandhur Union, Dindigul District. The respondent was initially promoted as Headmaster and thereafter, as Headmaster (BT Cadre) and on attaining the age of superannuation, the respondent retired on 31 March, 2002. The respondent was granted the first set of increment for acquiring B.Ed. degree in the year 1980. Thereafter, he was awarded another set of increment in the year 1983 for acquiring M.A. History. The respondent thereafter took M.Ed., degree. The request made by the respondent for awarding third set of increment was rejected by orders dated 23 January, 2015, 22 February, 2015 and 30 June, 2015. Feeling aggrieved, the respondent filed a Writ Petition in W.P.(MD)No.12430 of 2015. The learned Single Judge quashed the impugned orders and issued a Mandamus, directing the appellants to grant third incentive increment to the respondent.

3. The Writ Petition filed by the respondent ought to have dismissed on the ground of delay and laches. The respondent retired from service on attaining the age of superannuation on 31 March, 2002. It was only on 06 December, 2014, 12 years after retirement, the respondent made a claim for third set of incentive increment. There was no employer and employee relationship between the appellants and the respondent after his retirement on 31 March, 2002. The Writ Petition filed 13 years after retirement claiming incentive increment for acquiring the qualification in M.Ed., in 1993 should have been dismissed on the ground of delay and laches.

4. The respondent is not entitled to the third set of increment even on merits.

5. The issue is no longer *res integra*, in view of the decision of the Division Bench in **W.A.No.1664 of 2016, dated 29 June, 2018 [The Director of School Education, DPI Campus, College Road, Chennai-600 006 and two others vs. V.Dhanapal]**. The Division Bench made the legal position clear that there cannot be a right to claim the third set of incentive increment for obtaining the M.Phil, qualification after receiving two sets of increments. We are, therefore, of the view that the impugned order directing the appellants to sanction third set of incentive increment to a teacher on attaining the age of superannuation on 31 March, 2002, is Factually and legally unsustainable.

6. The order dated 08 May, 2017 is set aside. The Writ Petition in W.P.(MD)No.12430 of 2015 is dismissed.



7. In the upshot, we allow the intra-Court appeal. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)

+1cc to SPL.Govt.Pleader, Sr.No.97101
+1cc to Mr.N.Sathish Babu , Advocate Sr.No.97169

SML

KM/BK/SAR2/26.12.2018/3P/3C

Judgment made in
W.A. [MD]No.1532 of 2018
Dated: **26.11.2018**