

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

WA No.3378 of 2019
and CMP No.21655 of 2019

1. The State of Tamil Nadu,
Rep. by its Secretary,
Home Department (Police.18),
Fort St.George,
Chennai - 600 009.

2. The Director,
Forensic Science Department,
30-A, Kamarajar Salai,
Mylapore, Chennai - 600 004.

... Appellants

Vs.

Dr.P.Kirubakaran

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 23.07.2019 made in WP No.13645 of 2016.

W.P.No.13645/2016:

Petition filed under Article 226 of the Constitution of
India for issuance of a Writ of Certiorarified Mandamus Calling
for the records relating to the order of the 1st respondent made
in the proceedings G.O. M.s. No.825 dated 17.11.2015 and quash
the same and consequently direct the respondent to extend all
the benefits of the 3 advance increment fixation of pay and
other benefits for all purpose including pension and other
pensionary benefit.

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Government Pleader.

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is filed against the order dated
23.07.2019 made in WP No.13645 of 2016, by which the writ
Court, while allowing the writ petition, set aside G.O.Ms.No.825

and directed the respondents/appellants herein to grant one increment to the writ petitioner for obtaining Ph.D. Degree, in a phased manner depending upon the qualification obtained by him, within a period of 45 days from the date of receipt of a copy of the order made in the writ petition.

2. Short facts leading to the filing of the writ appeal, are as follows:

(i) Writ Petitioner, while working as a Scientific Officer, obtained permission from the Directorate of Forensic Sciences Department in the year 1985 for pursuing Ph.D. Degree on part-time basis and in the year 1996, he was awarded Ph.D. Degree in Polymer Science by the University of Madras. Writ petitioner, having acquired the said Degree, requested to sanction advance increment to him and in support of his demand, he has also quoted the precedent of one G.Thirunavukkarasu, who was sanctioned advance increment on the basis of the order of this Court dated 29.08.2013 passed in W.P.No.24006 of 2013 and the subsequent contempt petition. In the order dated 29.08.2013, this Court directed that G.O.Ms.No.1159 P&AR (FR.II) Department dated 21.11.1984 shall be taken note of for grant of advance increment

(ii) Against the said order, the Government filed W.A.No.393 of 2014, in which, a Hon'ble Division Bench of this Court directed the Government to consider the representation of the writ Petitioner therein by taking into account all the Government Orders and statutory rules prevalent at that time. Since the writ petitioner had acquired Ph.D. Degree, he claimed advance increment, by means of G.O.Ms.No.1159, Personnel and Administrative Reforms (Fundamental Rule.II) Department dated 21.11.1984 that there is a revival of G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983 and in terms of Clause No.4 of G.O.1159, the benefit of advance increment needs to be extended to all Government Servants, including teachers.

(iii) Writ petitioner filed WP No.13645 of 2016, challenging the order of the 1st Respondent dated 17.11.2015 made in G.O.Ms.No.825, by which his request for granting three advance increment stood rejected. Writ Petitioner also sought a direction to the respondent therein to extend all the benefits of the three advance increment, fixation of pay and other benefits for all purpose, including pension and other pensionary benefit.

(iv) Before the writ Court, learned Special Government Pleader appearing for the respondents contended that though the petitioner had acquired Ph.D.Degree, his claim based on G.O.Ms.No.1159 dated 21.11.1984 cannot be entertained, as the

benefit extended to a similarly placed person, namely, G.Thirunavukkarasu was based on the orders of this Court in order to avoid contempt proceedings. It is further contended that the Writ Appeal filed by the Government against the order dated 29.08.2013 was dismissed on the ground of laches and not on merits. Though the benefit of advance increment was restored in entirety, persons who are holding the particular post alone would be entitled to advance increment and it was pointed out that originally, advance increment was paid on monthly basis and in G.O.1159, it was stipulated as follows:

"3. Such of the Officers who have already availed themselves of the lumpsum grant under G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.II) Department dated 5.9.1983 and permitted to retain the benefit. However, if a person who has already drawn the lumpsum grant wishes to avail himself of the scheme of sanction of advances increment, he shall refund the lumpsum grant in one installment and then apply to the concerned authority for sanction of advance increment."

(v) Before the writ Court it was also stated that as there is a separate scheme / Government Order for sanctioning of advance increment to teachers and though the Government Order is applicable to Home Department and that the petitioner also working in the said Department, the order restricts the grant of advance increment only to Police Constables coming under the Home Department.

(vi) Before the writ Court, the learned Government Counsel also quoted the judgment of the Hon'ble Supreme Court in the case of State of Bihar vs. Upendra Narayan Singh and Others, reported in 2009 (4) SCALE 282 to contend that if an illegality or irregularity has been committed in favour of any individual or group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity of illegality or for passing order.

(vii). It was the further argument of the respondents therein that there is no provision either in the Fundamental Rules or in the General Rules for the Tamil Nadu State and Subordinate Services or in the Special Rules for the Tamil Nadu Forensic Science Subordinate Service governing the service conditions of the staff of the Forensic Sciences Department to sanction advance increment for acquiring Ph.D.Degree qualification. The Government cannot be compelled to issue any administrative or executive order for sanctioning advance increment to the petitioner. As the Petitioner is a Scientific Officer, he is not entitled to get any advance increment and a wrong order or benefit given to one G.Thirunavukkarasu would not entitle the petitioner to claim the same benefit.

(viii) After hearing the learned counsel for the parties, writ Court, allowed WP No.13645 of 2016 vide order dated 23.07.2019. Observation and the relevant portion of the order of the writ Court reads thus.

"9. The facts reveal that the petitioner served as Deputy Director, Forensic Sciences Department at the time of his retirement in 2016 and during his service, he pursued his Ph.D.Degree after obtaining due permission from the Department and completed the same. Though the petitioner requested for advance increment, he was not granted any increment in terms of G.O.Ms.No.1159 P&AR (FR.II) Department dated 21.11.1984, by which, G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983 was revived. A perusal of Clause No.4 of G.O.1159 unfolds the fact that the benefit of advance increment needs to be extended to all Government Servants, including teachers and a close reading of G.O.Ms.No.843 dated 05.09.1983 would go to show that it was issued for the purpose of grant of lumpsum amount as an incentive in order to enable Government Employees to pursue further education and acquire higher qualification. Even though it was contended by the Respondents that G.O.Ms.No.843 dated 05.09.1983 is applicable to the staff members working in Home Department, especially to Police Constables, such segregation of category is not found in the contents of the said G.O., which merely stipulates that all the Government Servants, including teachers are entitled to advance, other the benefits of Clause No.4 of G.O.1159 would have become redundant.

10. This Court feels it appropriate to point out that the teachers have no role to play in the Personnel and Administrative Reforms Department and even assuming for the sake of argument that the word 'teachers' has been wrongly referred in G.O.1159, as they have got a separate Government Order for claiming advancement increment, the intention of the Government is very clear that all the Government Servants must be granted the benefit. A harmonious reading has got to be given to both the Government Orders, namely, G.O.1159 and G.O.843 and if the intention of the Government was to give the benefit only to certain categories, then there is no need for inclusion of Clause No.4 in G.O.1159 and therefore, this Court is of the view that the benefit of advancement increment needs to be given to a person, who has completed Ph.D. in Forensic Sciences.

11. The Government, having utilized the services of the Petitioner in a proper perspective, cannot deny advance increment to the Petitioner, especially when such benefit was extended to Government Servants on earlier occasions by G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983, which was revived subsequently. On a bare scrutiny of G.O.1159, no other interpretation can be

given than the one that the intention of the Government was to extend the benefit to all Government Servants without any restriction in terms of staff category. Even though G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983 restricted the grant to only one sect of people, the subsequent G.O.1159 has widened the scope and therefore, this Court is of the view that the Petitioner, who is a Ph.D.Holder is entitled to only one advance increment. At the same time, the petitioner is not entitled to three advance increments, as the petitioner had already been holding a P.G. qualification.

12. In view of the foregoing discussions and observations, the Writ Petition is allowed and the impugned proceedings of the 1st Respondent dated 17.11.2015 made in G.O.Ms.No.825 is set aside. The Respondents are directed to grant one increment to the petitioner for obtaining Ph.D. Degree, in a phased manner depending upon the qualification obtained by him, within a period of 45 days from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

3. Aggrieved by the abovesaid order, the respondents therein have filed the instant writ appeal on the following grounds.

(i) Writ Court ought to have considered that Ph.D. degree qualification acquired by the respondent/writ petitioner is out of his own interest without any statutory obligation and the Government cannot sanction advance increment for acquisition of the same.

(ii) Writ Court ought to have considered as to whether acquisition of Ph.D. degree is useful to the staff of the Forensic Sciences Department in doing the day to day work since the department is only a Laboratory oriented department i.e., analysing the samples received from the Police, Courts, etc., which require only possession of a M.Sc. degree qualification as per the Statutory Rules.

(iii) Writ Court ought to have considered that the matter of sanction of advance increment to government servants for acquiring higher qualification is a service matter involving financial implication. The general conditions of service of the government servants are governed by Statutory Rules, viz., Fundamental Rules and General Rules for the Tamil Nadu State and Subordinate Services and the Government, being the Employer, is bound to follow the statutory rules.

(iv) Writ Court ought to have considered that, as per administrative law, judicial intervention or adjudication of a service matter is warranted only when it is alleged that there is malafide intention, bias, colourable exercise of power, etc., on the part of the Employer/Government.

(v) Writ Court ought to have considered that, in the absence of statutory stipulation for acquiring Ph.D. degree by the personnel of the Forensic Sciences Department, in the Fundamental Rules or the Special Rules for the Tamil Nadu Forensic Science Subordinate Service and the Special Rules for the Tamil Nadu Forensic Science Service for initial appointment, continuance and further promotion and subsequent sanction of advance increment, the first appellant cannot be directed to pass orders on the request of the respondent/petitioner, which will lead to violation of the Statutory Rules in force.

(vi) Writ Court ought to have considered that the orders issued by the Government in G.O. (Ms.) No. 1159, Personnel & Administrative Reforms (FR.II) Department, dated 21.11.1984 is only a general Executive order relating to certain specialties such as Engineering, Agriculture and Medicine etc., without having any statutory authority and the respondent/petitioner cannot claim sanction of advance increment for acquiring Ph.D. degree qualification from the date of acquiring qualification.

(vii) Writ Court ought to have considered that, in the absence of specific scheme or statutory provisions for sanction of advance increment to the staff of the Forensic Sciences Department for acquiring Ph.D. degree, it is not open to the Court to adjudicate the prayer of the respondent/writ petitioner for sanction of advance increments.

(viii) Writ Court ought to have considered that the Government could not spend the taxpayers money arbitrarily by sanctioning the advance increments since the Scientific staff of the Forensic Sciences Department have been given good scales of pay, as detailed below:-

Sl.No .	Name of the post	Pay Band	Grade Pay Rs.
1	Director	PB-4 Rs.37400 - 67000	9500
2	Additional Director	PB-4 Rs.37400 - 67000	8700
3	Joint Director	PB-3 Rs.15600 - 39100	7600
4	Deputy Director	PB-3 Rs.15600 - 39100	6600
5	Assistant Director	PB-3 Rs.15600- 39100	5400
6	Scientific Officer	PB-2 Rs.9300 - 34800	5100
7	Junior Scientific Officer	PB-2 Rs.9300 - 34800	4800

(ix) Writ Court ought to have considered that the Government have passed orders in G.O. (Ms.) No. 154, Personnel & Administrative Reforms Department, dated 26.10.2010, that sanction of advance increments for acquiring M.B.A. degree qualification already in vogue from the year 1970 was discontinued.

(x) Writ Court ought to have considered that, if the request of the government employees in the Forensic Sciences Department for sanction of advance increments for acquisition of higher qualification from the date of acquisition is complied with, based on the orders of this Hon'ble Court, dated 25.11.2010 in Writ Petition No.2573/2008, then it may cause heavy financial constraint to the exchequer, which will not be conducive to the smooth financial administration of the State.

(xi) Writ Court ought to have considered that, in the absence of statutory requirement for acquisition of higher qualifications like Ph.D. degree, if the orders of this Hon'ble Court for sanction of advance increment is complied with, then it will open flood gates and similarly placed persons in the Forensic Sciences Department and other departments of the Government will claim such sanction of advance increment from the date of acquisition of such higher qualification leading to heavy financial outflow from the State Exchequer.

(xii) Writ Court ought to have considered the consequences of directing the first appellant to sanction advance increment to the respondent/writ petitioner for acquiring Ph.D. degree from the date of its acquisition, since as on date there are 11 Ph.D. degree holders in Forensic Sciences Department, for whom the Government have to sanction advance increments from the date of acquisition of Ph.D. degree on the principle of equality, which will result in heavy financial outflow, burdening the State Exchequer.

(xiii) Writ Court ought to have considered that, since the Forensic Sciences Department is basically an analytical department, i.e., laboratory oriented department, possession of the Ph.D. degree is not at all required to the staff of that department in general and the respondent/petitioner, in particular. Ph.D. degree qualification is an essential and requisite qualification only for the Teaching Staff in the Collegiate Education Department and the Universities.

(xiv) Writ Court ought to have considered that, mere permission granted by the government to study Ph.D. degree on part-time basis, does not bind or mandate the first appellant (Government) to sanction advance increments and it also does not confer any rights on the respondent/petitioner to claim advance increments after acquisition of such degrees.

(xv) Writ Court ought to have considered that, over a period of time, number of universities has proliferated manifold and almost all the universities offer Ph.D. degree through Distance Education and Part-time mode. The fact remains that, such doctoral programmes are utilised fully only in limited departments, viz., Collegiate Education, Research & Analysis, departments of Universities, etc. As such, Ph.D. degree qualification acquired by the staff of the Forensic Sciences Department will not materially change in discharging their day-to-day official duties.

(xvi) Writ Court, while setting aside the impugned order of the Government, has placed reliance on Clause 4 of G.O. (Ms) No. 1159, viz., relying a portion of the said G.O., which reads as under:

(a) Such of the Officers who have already availed themselves of the lumpsum grant under G.O. (Ms) No.843, Personnel and Administrative Reforms (F.R.II) Department, dated 05.09.1983 are permitted to retain the benefit. However, if a person who has already drawn the lumpsum grant, wishes to avail himself of the scheme of sanction of advance increment, he shall refund the lumpsum grant in one instalment and then apply to the concerned authority for sanction of advance increment.

(b) These orders will apply to Government Servants including teachers.

On the basis of the above, the writ Court proceeded to hold that the benefits of advance increment needs to be extended to all the government servants, in the light of orders issued in G.O. Ms. No.843, P&AR (FR-I) Department, dated 05.09.1983. However, writ Court ought to have appreciated the fact that the aforesaid orders issued in the year 1983 and 1984 are purely executive/administrative in nature and they cannot be pressed into service for claiming advance increment in the year 2015 and that there is no statutory obligation on the part of the government to sanction advance increment to government servants for acquisition of additional qualifications on their own volition.

(xvii) Writ Court held that the government have utilized the services of the petitioner in proper perspective, and hence cannot deny advance increment to the petitioner, especially when such benefit was extended to government servants on earlier occasions by G.O. Ms. No.843, P&AR (FR-I) Department, dated 05.09.1983. However, the writ Court has not appreciated the fact that G.O. (Ms) No. 1159 was amended by G.O. Ms. No.97, P&AR (FR-IV) Department, dated 05.07.2010 and the said amendment does not entitle a government servant to claim advance increment for acquisition of additional qualifications. Operative part of the amendment is extracted below:-

(a) The scheme of sanction of advance increment is applicable to officers upto and inclusive of second level officers below the Heads of Departments;

(b) If the special qualification is prescribed as one of the requisite qualifications for appointment to any post or where the scale of pay for such post is prescribed taking into account the special qualification for appointment to any post or where the scale of pay for such post is prescribed, taking into account the special qualification, the scheme will not be applicable to those acquiring the special qualification;

(c) Where the Government have spent money on any officer by giving him study leave and allowance or have treated the study period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other

than Account Test for Sub-ordinate Officers Part I is made essential for further promotion, he is not entitled to the benefit;

(d) In respect of those for whom the Post-Graduate qualification is made essential for further promotion, they are also not entitled for the benefit.

(xviii) Writ Court ought to have appreciated the fact that G.O. Ms.No.1159 has been amended by G.O. Ms. No.97 and it was clearly mentioned in the order, impugned in the Writ Petition, viz., G.O.Ms.No.825, Home (Police-XVIII) Department, dated 17.11.2015. In fact, in the impugned order, it was clearly stated that G.O. Ms. No.97, dated 05.07.2010 issued amendments to G.O. (Ms) No.1159, P&AR (FR-II) Department, dated 21.11.1984. After extracting the amendment and after recording the fact that G.O. Ms. No. 154, P&AR (FR-IV) Department, dated 02.10.2010 dispensed with the scheme of sanction of two advance increments for Post Graduates in Business Administration, the request of the individual Dr.P.Kirubakaran was examined in the light of the prevailing statutory rules and G.Os and it was found that there is no provision either in Fundamental Rules or in General Rules for Tamil Nadu State and Subordinate Services or in the Special Rules for Tamil Nadu Forensic Sciences Department for sanctioning the advance increment for acquiring Ph.D., qualification. Detailed reasons have been given to reject the request, but the Learned Single Judge has not taken note of the reasons and grounds in the impugned government order and without examining the facts in proper perspective, has set aside the impugned Government order and allowed the Writ Petition.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. Government have issued G.O.(Ms).No.1159, Personnel & Administrative Reforms Department, dated 21.11.1984, is extracted hereunder:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Fundamental Rules - Scheme of Sanction of Advance increments - Revival - Orders - Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (F.R.II) DEPARTMENT
G.O. (Ms).No.1159 Dated: 21-11-1984

Read:

1. G.O.(Ms)No.531, Finance Department, dated 25.04.1963.
2. G.O.(Ms)No.825, Personnel and Administrative Reforms (F.R.I.) Department, dated 6.7.1977.
3. G.O.(Ms)No.1195, Personnel and Administrative Reforms (F.R.I.) Department, dated 27.10.1978.
4. G.O.(Ms)No.843, Personnel and Administrative Reforms

(F.R.I.) Department, dated 5.9.1983.

ORDER:

In the Government Order 4th read above, the scheme of sanction of advance increments for acquisition of higher qualifications was replaced by the scheme of sanction of lumpsum grant. The orders took effect from 5.9.1983. Departments of Secretariat were requested to determine the quantum of lumpsum / grant in lieu of advance increments in consultation with Personnel and Administrative Reforms and Finance Departments.

2. Several representations have been received requesting that the advance increment scheme may be continued, Government have carefully examined the request and have decided to revive the scheme of sanction of advance increments. Accordingly the Government direct that the scheme of sanction of advance increments for acquisition of higher qualifications in vogue prior to 5.9.1983 be revived with immediate effect. The orders issued in the Government Order fourth read above and the clarifications issued there under from time to time be cancelled subject to the modification specified in para 3 below.

3. Such of the Officers who have already availed themselves of the lumpsum grant under G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.II) Department, dated 5.9.1983 and permitted to retain the benefit. However, if a person who has already drawn the lumpsum grant wishes to avail himself of the scheme of sanction of advances increment, he shall refund the lumpsum grant in one installment and then apply to the concerned authority for sanction of advance increment.

4. These orders will apply to Government Servants including teachers.

5. Departments of Secretariat are requested to take action in accordance with the orders in paras 1 to 4 above.

6. This order issues with the concurrence of Finance Department - vide its U.O.No. 4056/FS/84, dated 9.11.1984.

(BY ORDER OF THE GOVERNOR)

T.V. ANTHONY

SECRETARY TO GOVERNMENT

6. Secretary to the Government, Home (Police.18) Department, Chennai, has sent a Letter No.41732/Police.XVIII/2007-2, Home Department, dated 05.07.2007, rejecting the claim of Dr.G.Thirunavukkarasu, the then Scientific Assistant Grade I, for sanction of 3 advance increments from the date of acquisition, reads thus:-

Home (Police.18) Department

Secretariat, Chennai-9.

Letter No.41732/Pol.18/2007-2, Dated : 05.07.2007

From
S.Malathi I.A.S.,
Secretary to Government.

To
The Director (i/c),
Forensic Sciences Department,
Chennai-4.

Madam,

Sub: Establishment - Forensic Sciences Department -
Sanction of advance increments to
Dr.G.Thirunavukkarasu, Scientific Assistant
Grade-I for having acquired Ph.D qualification -
Requested - Regarding.

Ref: Your Letter No.A5/33402/05, dated 18.4.2007
and 08.06.2007.

I am directed to invite attention to the references cited and to inform that your proposal for granting of 3 advance increments to Dr.G.Thirunavukkarasu, Scientific Assistant Grade-I for having acquired Ph.D. in Forensic Science cannot be conceded now. The above proposal may have to be considered only by the next pay commission.

Yours faithfully,
Sd/xxx
for Secretary to Government.

7. Government have issued G.O.(Ms).No.97, Personnel & Administrative Reforms Department, dated 05.07.2010, is extracted hereunder:-

GOVERNMENT OF TAMIL NADU
ABSTRACT

Fundamental Rules - Government Servants - Grant of Advance Increment -Acquisition of certain higher qualification at Government cost - Amendment to G.O.(Ms)No.1159, Personnel and Administrative Reforms (FR-II) Department dated 21.11.1984 - Orders - Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (FR-IV) DEPARTMENT
G.O. (Ms) No.97 Dated: 05.07.2010

ஆணி 21

திருவள்ளூர் ஆண்டு 2041

Read:

1. G.O.(Ms) No.531, Finance Department, dated 25.04.1963.
2. G.O.(Ms) No.1195, Public Works Department, dated 11.07.1972.
3. G.O.(Ms)No.825, Personnel and Administrative Reforms (FR.I) Department, dated 06.07.1977.
4. G.O.(Ms)No.1195, Personnel and Administrative Reforms (FR.I) Department, dated 27.10.1978.
5. G.O.(Ms) No.843, Personnel and Administrative Reforms (FR-II) Department, dated 05.09.1983.
6. G.O.(Ms) No.1159, Personnel and Administrative Reforms (F.R.II) Department, dated 21.11.1984.
7. Government Letter No.23270/P&AR (FR-II) Department/ 85-1, dated 06.05.1985.
8. Order of High Court of Madras, dated 07.01.2009 in W.P.No.22933/2007.

ORDER:

In the Government Order first to fourth read above, the Government have ordered among other things, that the Government Servant, who acquired Post Graduate qualification in certain specialties such as Business Administration, Engineering, Agriculture, Medicine, etc. after entering into service be accorded two advance increments with effect from the date of acquiring of such qualification. Subsequently, in the Government Order fifth read above, the Government have replaced the scheme of sanction of two advance increments by a scheme of sanction of lump-sum grant subject to among others the following conditions:-

i) The scheme is applicable to officers upto and inclusive of second level officers below the Heads of Departments.

ii) If the special qualification is prescribed as one of the requisite qualifications for appointment to any post or where the scale of pay for such post is prescribed taking into account, the special qualification for appointment to any post or where the scale of pay for such post is prescribed, taking into account the special qualification, the scheme will not be applicable to those acquiring the special qualification.

iii) Where the Government have spent money on any officer by giving him study leave and allowance or have treated the study period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other than Account Test for Sub-ordinate Officers Part-I is made essential for further promotion, he is not entitled to the benefit.

iv) In respect of those for whom the Post Graduate qualification is essential for further promotion they are not entitled for the benefit.

2. The Government have thereafter reviewed the scheme and decided to revive the scheme of sanction of advance increments. Accordingly in the Government Order sixth read above, the scheme

of sanction of lump-sum grant was withdrawn and the scheme of sanction of advance increments for possession of higher qualification was reintroduced. In the Government letter seventh read above, the Government clarified that the conditions specified in G.O.(Ms)No.843, Personnel and Administrative Reforms (FR-II) Department, dated 05.09.1983 were not cancelled and hence those conditions would hold good for Sanctioning advance increments on or after 05.09.1983.

3. The Hon'ble High Court of Judicature at Madras in its order eight read above had observed that the clarification issued in the form of a letter cannot be allowed to either overtake or override the Government Order issued in the matter.

4. The Government have, therefore, examined the matter in detail in the light of the above orders of the Hon'ble High Court and have decided to issue an amendment to the Government order sixth read above in the form of Government Order reiterating the conditions laid down in the Government Order fifth read above. Accordingly, the following amendment is issued to the orders issued in G.O.(Ms.)No.1159, Personnel and Administrative Reforms (FR-II) Department, dated 21.11.1984.

5. The amendment hereby made shall come into force on the date of issue of order.

AMENDMENT

In G.O.(Ms) No.1159, Personnel and Administrative Reforms (FR-II) Department, dated 21.11.1984, after paragraph 3, the following paragraph shall be inserted as para 4, namely:-

"4.(i) The scheme of sanction of advance increments is applicable to officers upto and inclusive of second level officers below the Heads of Departments;

(ii) If the special qualification is prescribed as one of the requisite qualifications for appointment to any post or where the scale of pay for such post is prescribed taking into account the special qualification for appointment to any post or where the scale of pay for such post is prescribed, taking into account the special qualification, the scheme will not be applicable to those acquiring the special qualification;

(iii) Where the Government have spent money on any officer by giving him study leave and allowance or have treated the study period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other than Account Test for Sub-ordinate Officers Part-I is made essential for further promotion, he is not entitled to the benefit;

(iv) In respect of those for whom the Post-Graduate qualification is made essential for further promotion, they are also not entitled for the benefit".

2) The paragraphs 4, 5 and 6 shall be renumbered as paragraphs 5, 6 and 7 respectively.

(BY ORDER OF THE GOVERNOR)

K.N.VENKATARAMAN

SECRETARY TO GOVERNMENT.

8. Government have issued G.O.(Ms).No.154, Personnel & Administrative Reforms Department, dated 26.10.2010, which is extracted hereunder:-

GOVERNMENT OF TAMIL NADU
ABSTRACT

ADVANCE INCREMENT - Sanction of Advance Increment to Government officials for acquiring MBA Degree of recognized Institutions - Orders Issued - Cancellation of the Government Orders - Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (FR-IV) DEPARTMENT
G.O. (Ms) .No.154

Dated 26.10.2010

ஐப்பசி 09.

திருவள்ளூர் ஆண்டு 2041

Read:

1. G.O.(Ms.) No.825, Personnel and Administrative Reforms (FR.I) Department, dated 06.07.1977.
2. G.O.(Ms.)No.1195, Personnel and Administrative Reforms (FR.I) Department, dated 27.10.1978.

ORDER:

In the Government Order first read above, Government have ordered that the Government Servants working in the Departments where management qualification could be utilized and who hold the post graduate degree of Master of Business Administration of recognized institutions be given two advance increments. While introducing the above said scheme, acquiring M.B.A., qualification was rare and no possibilities existed through Distance Education. Further, it was felt that in the primitive periods, management knowledge may be helpful in administration to a limited extent. However, now-a-days due to advancement of technologies, management know-how is widespread in administration.

2. It is also notice that over a period of time, the number of universities has proliferated manifold and almost all the universities offer this degree through Distance Education. Almost all the Departments state that the M.B.A. qualification acquired by the individuals are useful for their Departments. However, the fact remains that such management qualifications are utilized fully only in limited Departments such as Sugar Mills, TASMAL, TNCSC departments etc. As such, it is considered that the qualification will not materially impact employees in discharging their official duties.

3. Taking into consideration of the above facts, the Government after careful examination have decided to cancel the order of G.O.(Ms.)No.825, Personnel and Administrative Reforms (FR-I) Department, dated 06.07.1977 and subsequent orders issued regarding sanction of two advance increments to those who already possess the post graduate degree viz. Master of Business Administration from the recognized Universities (including Open Universities) and this system is dispensed with, from the date of issue of this order.

(BY ORDER OF THE GOVERNOR)

R.KANNAN

PRINCIPAL SECRETARY TO GOVERNMENT.

9. Government Letter No.6379/Police.XVIII/2011-3, Home Department, dated 30.03.2011, reads thus:-
Home (Pol.18) Department
Omandurar Govt. Estate
Chief Secretariat, Chennai-2

Letter No.6379/Pol.18/2011-3, dated : 30.03.2011

From

Thiru K. Gnanadesikan, I.A.S.,
Principal Secretary to Government.

To

Dr.G.Thirunavukkarasu,
Scientific Officer,
Physics Division,
Forensic Sciences Department,
Chennai - 600 004.

Through the Director (in-charge) Forensic Sciences
Department, Chennai-4.

Sir,

Sub: Orders of High Court of Madras in W.P.No.2573 of
2008 - Sanction of advance increments to
Dr.G.Thirunavukkarasu for acquiring Ph.D -
Regarding.

Ref: (1) Your representation dated 27.10.199.
(2) Govt. Lr.No.41732/Pol.18/2007-2, dated
05.07.2007.
(3) Order of the High Court of Madras in
W.P.No.2573 of 2008 dated 25.11.2010.
(4) Your representation dated 13.01.2011.

I am directed to state that in your representation first cited you have requested the Director of Forensic Sciences Department, Chennai to consider your claim for grant of advance increments for having acquired Ph.D. As the above representation was not disposed of by the Director of Forensic Sciences Department for long, again you have given a representation dated 16.10.2006 to the Director of Forensic Sciences Department which was also not disposed of by him and therefore you have filed a writ petition in W.P.No.6390 of 2007 before the High Court of Madras with a prayer to direct the respondents to dispose of your representation dated 16.10.2006. The Hon'ble High Court of Madras by an order dated 22.02.2007 has disposed of the writ petition with a direction to the respondents to consider your representation dated 16.10.2006 on merits and in accordance with law within a period 8 weeks from the date of receipt of a copy of order. After detailed examination of the proposal of the Director of Forensic Sciences Department, the first respondent, i.e. the Government in the letter second cited have informed that three advance increments cannot be conceded to you and that the proposal for granting three advance increments may have to be considered only by the next pay commission. Aggrieved by the reply furnished by the Government on 05.07.2007, you have filed W.P.No.2573 of 2008 before the High Court of Madras challenging the impugned order dated 05.07.2007 and seeking to quash the same for a direction to the respondents to grant three advances to you for having acquired Ph.D degree in Forensic Science. The Hon'ble High Court of Madras in the order third cited has set aside the order passed by the Government in the letter second cited and also given a direction to the first respondent i.e. the Government to consider the claim of the petitioner for advance increments within a period of eight weeks from the date of receipt of a copy of the order. Accordingly, you have given a representation in the reference fourth cited to Government requesting to sanction advance increments to you.

2. The Government have examined your representation carefully based on the orders of the High Court of Madras in W.P.No.2573 of 2008. Even in your representation dated 27.10.1999 addressed to the Director of Forensic Sciences Department, you have admitted that sanction of advance increments to the scientific staff, who acquire Ph.D.is not in vogue in the Forensic Sciences Department. There is no scheme of sanctioning advance increments to staff in Forensic Sciences Department who acquire Ph.D in Forensic Science. No general orders have been issued by the Government granting advance increments to the employees in Forensic Sciences Department for acquiring Ph.D. I am, therefore, to state that your request for sanction of advance increments for having acquired Ph.D is not feasible compliance.

Yours faithfully,
Sd/xxx

(K.Gnanadesikan)
for Principal Secretary to Government

10. Government Letter No.29925/Police.XVIII/2011-1, Home
Department, dated 27.04.2011, reads thus:-

Home (Pol.18) Department
Omandurar Govt. Estate
Chief Secretariat, Chennai-2

Letter No.29925/Pol.18/2011-I, dated : 27.04.2011

From
Thiru K.Gnanadesikan, I.A.S.,
Principal Secretary to Government.

To
Dr.G.Thirunavukkarasu,
Scientific Officer,
Physics Division,
Forensic Sciences Department,
Chennai - 600 004.

Through the Director (in-charge), Forensic Sciences Department,
Chennai-4.

Sir,

Sub: Withdrawal of orders issued in Government Letter
No.6379/Police.18/2011-3, dated 30.03.2011 to
comply with the orders of the High Court of
Madras dated 25.11.2010 in W.P.No.2573/2008
filed by Dr.G.Thirunavukkarasu, Scientific
Officer, Forensic Sciences Department -
Regarding.

Ref: (1) Orders of the High Court of Madras in
W.P.No.2573 of 2008 dated 25.11.2010.
(2) Your representation dated 13.01.2011.
(3) Government Letter No.6379/Police.18/2011-3,
dated 30.03.2011.

In compliance of the oral observation made by the Hon'ble
Court in W.P.No.2573 of 2008 that rejection of the request of
Dr.G.Thirunavukkarasu, Scientific Officer, Physics Division,
Forensic Sciences Department, Chennai for sanction of advance
increments for acquiring Ph.D. in Forensic Science is not
acceptable to the Court and such rejection amounts to contempt
of the court, the Letter No.6379/Police.18/2011-3, dated
30.03.2011 rejecting the request of the individual for sanction

of advance increments for having acquired Ph.D. is withdrawn.

Yours faithfully,
Sd/xxx
(K.Gnanadesikan)
for Principal Secretary to
Government

11. D.O.Letter No.7, dated 28.04.2011 of the then Additional Advocate General - I, Tamil Nadu, reads thus:-

D.O.Letter No.7, dated 28.04.2011

Dear Thiru.K.Gnanadesikan,

When I was in the court of Hon'ble Justice V.Dhanapalan yesterday, a Contempt Petition in No.677/2011 filed by Dr.G.Thirunavukarasu against you came up for admission. The contempt petition arose from the order of Hon'ble Justice V.Dhanapalan in W.P.No.2573/2008 dated 25.11.2010. Wherein it was ordered that the claim of the petitioner for advance increments should be considered within a period of eight weeks from the date of the receipt of the copy of the order. By the same judgment the order dated 05.07.2007 passed by the then Secretary to Government, Home (Police XVIII) Department was also quashed.

W.P.No.2573/2008 was filed challenging the order of the Home Secretary dated 05.07.2007 in Letter No.46732/Police XVIII/07-2, stating that the proposal for granting three advance increments to the petitioner cannot be considered and seeking to quash the said letter.

The main stand taken by the Government in the writ petition was that the petitioner had undergo studies by spending Government money for acquiring higher qualification and in the absence of any G.O. for granting advance increments for acquiring Ph.D qualification, the same cannot be given to the petitioner. After hearing both sides, the Learned Judge came to the conclusion that the claim of the petitioner is based on G.O. (Ms.).No.1159, dated 21.11.1984, that the petitioner has done his research work without detriment to his normal office work, that no financial assistance has been given to the petitioner and that the petitioner had not violated any of the terms and conditions of the permission letter. Based on the above finding the Learned Judge held that the impugned communication suffers from legal infirmity as it goes against the Government Scheme as well as the letter of permission.

Finally, the impugned letter dated 05.07.2007 was quashed and the Government was directed to consider the claim within a period of eight weeks from the date of the receipt of a copy of the order.

Consequent upon the orders of the High Court, Dr.G.Thirunavukkarasu made a representation to the Principal

Secretary to Government, Home Department on 13.01.2011 and it appears that you have passed orders on his representation vide Letter No.6379/Police XVIII/2011-3, stating that the request for sanction of advance increments for having acquired Ph.D. is not feasible for compliance as there is no Scheme of sanctioning the same to the staff in the Forensic Sciences Department to acquire Ph.D. and as no general orders have been issued by the Government in respect of the same.

Your letter dated 30.03.2011 was probably on a supposition that the High Court has directed you to consider and dispose of the representation of the petitioner on merits and in accordance with lay within a time frame. But the order of the High Court is in the nature of a positive direction to consider the representation favourably. Hon'ble Justice V.Dhanapalan felt that a grave case of contempt has been committed by disobeying his order without carrying it in letter and spirit. I represented to the Hon'ble Judge that I will clarify the issue with you and the Hon'ble Judge was also pleased to adjourn the matter and desisted from issuing statutory notice which he was otherwise ready to do.

In the said circumstance, I would advise you to withdraw your letter dated 30.03.2011 and also to comply with the order passed in W.P.No.2573/2008 dated 25.11.2010 as early as possible to avoid the contempt proceedings initiated against you.

Sd/xxx

(S.RAMASAMY)

To

Thiru.K.Gnandesikan,
Principal Secretary to Government,
Home Department,
Chennai - 600 009.

12. Government have issued G.O.(Ms).No.272, Home Department, dated 11.05.2011, reads thus:-

GOVERNMENT OF TAMIL NADU

Abstract

Contempt Petition No.677 of 2011 in W.P.No.2573 of 2008 - filed by Dr.G.Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai - Sanction of advance increment to Dr.G.Thirunavukkarasu for having acquired Ph.D - Orders - Issued.

HOME (POLICE.18) DEPARTMENT

G.O.Ms.No.272

Dated : 11.05.2011

Read:

- (1) From Dr.G.Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai representation dated 27.10.1999.
- (2) From Dr.G.Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai representation dated 16.10.2006.
- (3) From the High Court of Madras order dated 22.02.2007.
- (4) From the Director (in-charge), Forensic Sciences Department, Chennai, Letter No.A5/33402/2005 dated 18.04.2007 and 08.06.2007 along with representation of Dr.G.Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai.
- (5) Govt. Letter No.41732/Pol.18/2007-2, dated 05.07.07.
- (6) From the High Court of Madras order dated 25.11.2010 in W.P.No.2573 of 2008.
- (7) From Dr.G.Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai representation dated 13.01.2001.
- (8) Govt. Letter No.6379/Pol.8/2011-3, dated 30.03.2011.
- (9) Govt. Letter No.29925/Pol.18/2011-1 dated 27.04.11.
- (10) From Thiru.S.Ramasamy, Additional Advocate General-I of Tamil Nadu, High Court, Chennai D.O.Letter No.7, dated 28.04.2011.

ORDER :

In the representation first read above Dr.G.Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai has requested the Director of Forensic Sciences Department, Chennai to consider his claim for grant of advance increments for having acquired Ph.D. In the representation second read above he has reminded the Director of Forensic Sciences Department for the same request. As the representations were not disposed of by the Director of Forensic Sciences Department for long time, Dr. G. Thirunavukkarasu has filed a writ petition in WP No.6390 of 2007 before the High Court of Madras with a prayer to direct the respondents to dispose of the representation dated 16.10.2006. The Hon'ble High Court of Madras in its order third read above has disposed of the writ petition with a direction to the respondents to consider the representation of Dr. G. Thirunavukkarasu dated 16.10.2006 on merits and in accordance with law with a period of 8 weeks from the date of receipt of a copy of order. Consequent to the judgement, the Director (in-charge), Forensic Sciences Department, Chennai in the reference fourth read above has

forwarded the representation of Dr. G. Thirunavukkarasu to the Government for consideration. After detailed examination, the Government in the letter fifth read above have informed that the proposal for granting three advance increments cannot be conceded now and may have to be considered only by the next pay commission. Aggrieved by the reply furnished by the Government in the letter dated 05.07.2007, Dr. G. Thirunavukkarasu had filed W.P. No.2573 of 2008 before the High Court of Madras challenging the impugned order dated 05.07.2007 and seeking to quash the same for a direction to the respondents to grant three advance increments to him for having acquired Ph.D degree in Forensic Science. The Hon'ble High Court of Madras in its order sixth read above had set aside the order passed by the Government in the letter fifth read above and also given a direction to the first respondent i.e. the Government to consider the claim of the petitioner for advance increments within a period of eight weeks from the date of receipt of a copy of the order. Subsequently, the individual in the representation seventh read above has requested the Government to sanction advance increments to him. In the Government letter eighth read above the individual has been informed that his request for sanction of advance increments for having acquired Ph.D is not feasible of compliance stating the reason that there is no scheme of sanctioning advance increments to staff in Forensic Sciences Department who acquire Ph.D in Forensic Science and that no general orders have been issued by the Government granting advance increments to the employees in Forensic Sciences Department for acquiring Ph.D.

2. Aggrieved by the reply furnished by the Government in the letter eighth read above, Dr. G. Thirunavukkarasu filed contempt petition in No.677/2011 before the Hon'ble High Court of Madras. In compliance of the oral observation made by the Hon'ble High Court of Madras in W.P. No.2573 of 2008 that rejection of the request of Dr. G. Thirunavukkarasu for sanction of advance increments for acquiring Ph.D. in Forensic Science is not acceptable to the Court and such rejection amounted to contempt of court, the Letter No.6379/Pol. 18/2011-3. dated 30.03.2011 rejecting the request of the individual for sanction of advance increments for having acquired Ph.D was withdrawn in the Government letter ninth read above. The Additional Advocate General-I of Tamil Nadu, High Court of Madras in the letter tenth read above has also stated that the above letter dated 30.03.2011 was probably on a supposition that the High Court has directed the Government to consider and dispose of the representation of the petitioner on merits and in accordance with law within a time frame. But the order of High Court is in the nature of a positive direction to consider the representation favourably. Therefore, he had advised the Government to withdraw the Letter No.6379/Pol. 18/2011-3, dated 30.03.2011 and also comply with the order passed in W.P.

No.2573/2008 dated 25.11.2010 as early as possible to avoid contempt of court.

3. The Government in G.O.Ms.No.39, Planning, Development & Special Initiatives (ST. 1) Department, dated 23.02.2010 have issued orders sanctioning one advance increment to the officers in Tamil Nadu Statistics Service and Tamil Nadu General Subordinate Service Class XLIII in Statistics Department who have acquired Ph.D in the above subject.

4. The Government, after careful examination, have decided to comply with the orders passed by the High Court of Madras in W.P. No.2573 of 2008 dated 25.11.2010. They accordingly sanction one advance increment to Dr. G. Thirunavukkarasu, Scientific Officer, Forensic Sciences Department, Chennai for acquiring Ph.D in Forensic Science from the date of award of Ph.D without prejudice to the right of the Government to file an appeal.

(BY ORDER OF THE GOVERNOR)
K. GNANADESIKAN
PRINCIPAL SECRETARY TO GOVERNMENT

13. Government have issued G.O.(Ms).No.825, Home Department, dated 17.11.2015, reads thus:-
GOVERNMENT OF TAMIL NADU
ABSTRACT

Forensic Sciences Department - Tamil Nadu Forensic Science Service - Dr. (Thiru.) P.Kirubakaran, Deputy Director, Main Forensic Sciences Laboratory, Chennai - Request for sanction of three advance increments for acquiring Ph.D. degree qualification - Writ Appeal No.393/2014 filed by the Government against the orders of the Hon'ble High Court dated 29.08.2013 in Writ Petition No.24006/2013 - Orders of the Hon'ble Division Bench of the Madras High Court dated 18.03.2014 - Follow-up action - Orders - Issued.

Home (Police.XVIII) Department
G.O. (Ms.) No.825

Dated: 17.11.2015

Read

1. G.O. (Ms.) No.1195. Personnel and Administrative Reforms (F.R.I) Department, dated 27.10.1978.
2. G.O.(Ms.)No.843, Personnel and Administrative Reforms (F.R.II) Department, dated 05.09.1983.
3. G.O.(Ms.)No.1159, Personnel and Administrative Reforms (F.R.II) Department, dated 21.11.1984.
4. G.O.(Ms.) No.97, Personnel and Administrative Reforms (F.R.IV) Department, dated 05.07.2010.
5. G.O.(Ms.)No.272, Home (Police.XVIII)

Department, dated 11.05.2011.

Read also

6. From Dr. (Thiru.) P.Kirubakaran, Deputy Director, Forensic Sciences Department, representation dated 07.06.2013.
7. Orders of the Hon'ble High Court, dated 29.08.2013 in Writ Petition No.24006/2013.
8. From Dr. (Thiru.) P.Kirubakaran, Deputy Director, Forensic Sciences Department, representation dated 25.09.2013 and 27.09.2013.
9. Orders of the Hon'ble Division Bench of the Madras High Court dated 18.03.2014.
10. From Dr.(Thiru.) P.Kirubakaran, Deputy Director, Forensic Sciences Department, representation dated 09.04.2014, 01.09.2014 and 04.08.2015.

ORDER

Dr.(Thiru) P.Kirubakaran, now Deputy Director, Forensic Sciences Department, while working as Scientific Officer, obtained permission from the Directorate of Forensic Sciences Department in the year 1985 for pursuing Ph.D. degree on Part-time basis. It is reported that, he was awarded Ph.D. degree in Polymer Science in the year 1996 by the University of Madras. In his representation dated 07.06.2013, he has stated that, since he was permitted by the Director of Forensic Sciences Department to do Ph.D. degree course in L.Dis.No.1306/A1/85, dated 31.01.1985, he pursued his studies and completed the Ph.D. degree. Hence, he has requested to sanction advance increment to him for having acquired Ph.D. degree qualification, along with arrears as was ordered in the case of Dr.(Thiru.) G.Thirunavukkarasu, then Scientific Officer, who was sanctioned an advance increment for having acquired Ph.D. degree qualification in G.O.(Ms.)No.272, Home (Police.XVIII) Department, dated 11.05.2011. In his further representations dated 25.09.2013 and 27.09.2013, while enclosing a copy of the order of the Hon'ble High Court dated 29.08.2013 in Writ Petition No.24006/2013, filed by him for sanction of advance increment, he had requested to sanction three advance increments from 20.09.1996 with arrears, i.e., from the date of his acquisition of Ph.D. degree qualification. Against the order of the Hon'ble High Court dated 29.08.2013 in Writ Petition No.24006/2013, the Government filed Writ Appeal No.393/2014. The Hon'ble Division Bench of the High Court of Madras, in its order dated 18.03.2014 in Writ Appeal No.393/2014, has directed the Government to consider the representation of Dr. (Thiru) P.Kirubakaran in the light of all the prevailing Government orders as well as statutory rules relevant to the issue. Dr. (Thiru.) P.Kirubakaran, Deputy Director, in his further representations dated 09.04.2014, 01.09.2014 and 04.08.2015, has

reiterated his earlier request for sanction of three advance increments to him.

2. The Government have carefully examined the request of Dr. (Thiru.) P.Kirubakaran, Deputy Director, in the light of the orders of the Hon'ble Division Bench of the Madras High Court, dated 18.03.2014 in Writ Appeal No.393/2014 and also in the light of the prevailing Government orders and statutory rules relevant to the issue of sanction of advance increment.

3. It is found that, one Dr. (Thiru.) G.Thirunavukkarasu, then Scientific Officer, now Assistant Director, Forensic Sciences Department, had filed Writ Petition No.2573/2008 in the Hon'ble High Court of Madras seeking directions on the following prayers:-

i) To quash Government Letter No.41732 Police.XVII1/2007-2, Home Department, dated 05.07.2007, in which the Government rejected his request for sanction of three advance increments on the ground that the proposal may have to be considered by the next Pay Commission); and

ii) To direct the Government to grant him three advance increments for having acquired Ph.D. degree in Forensic Science. In the above said Writ Petition No.2573/2008, the Hon'ble High Court, while concluding that the following reply given by the Government in Letter No.41 732 Police.XVII1/2007-2, Home Department, dated 05.07.2007, suffers from legal infirmity, has set aside the same and allowed the writ petition with a direction to consider the claim of the petitioner for advance inerements:-

"The proposal for granting of 3 advance increments to Dr.G.Thirunavukkarasu, Scientific Assistant Graded for having acquired Ph.D. in Forensic science cannot be conceded now. The above proposal may have to be considered only by the next Pay Commission."

Following the above said direction of the Hon'ble High Court, the Government, in Letter No.6379/Police.XVIII/2011-3, Home Department, dated 30.03.2011, has informed Dr.(Thiru.) G.Thirunavukkarasu, then Scientific Officer, that his request for sanction of advance increments for having acquired Ph.D. degree is not feasible of compliance on the ground that there is no scheme of sanctioning of advance increments to staff in Forensic Sciences Department who acquire Ph.D. degree in Forensic Science or no general orders have been issued for granting advance increments to the employees in Forensic Sciences Department for acquiring Ph.D. degree. Dr. (Thiru.) G.Thirunavukkarasu, aggrieved over the above said rejection, had filed a Contempt Petition No.677/2011 in the Hon'ble High Court. Since it was intimated then to the Government that such rejection is not acceptable to the Hon'ble High Court and it amounts to contempt, the Government, in G.O. (Ms.) No.272. Home (Police.XVIII) Department, dated 11.05.2011, sanctioned one advance increment to him for acquiring Ph.D. degree in Forensic

Science from the date of award of Ph.D. degree, without prejudice to the right of the Government to file an appeal.

4. Subsequently, Dr. (Thiru.) P.Kirubakaran, Deputy Director, Forensic Sciences Department, filed Writ Petition No.24006/2013, praying to direct the Government to sanction him three advance increments for acquiring Ph.D. degree as per G.O. (Ms.)No.1159, Personnel and Administrative Reforms (F.R.II) Department, dated 21.11.1984. At the initial hearing stage itself, the Hon'ble High Court, in its order dated 29.08.2013 in Writ Petition No.24006/2013, has passed the following order:-

"In view of the narrow prayer made during the hearing of the writ petition, the writ petition is disposed of directing the first respondent to pass orders on the representation of the petitioner dated 07.06.2013 in the light of G.O. (Ms.)No.1159, Personnel & Administrative Reforms (FR.II) Department, dated 21.11.1984 and the order of this Court dated 25.11.2010 in Writ Petition No.2573 of 2008, within a period of eight weeks from the date of receipt of a copy of this order. No costs."

Against the above said order of the Hon'ble High Court dated 29.08.2013 in Writ Petition No.24006/2013, the Government filed Writ Appeal No.393/2014. The Hon'ble Division Bench of the High Court of Madras, in its order dated 18.03.2014 in Writ Appeal No.393/2014, has issued the following order:-

xxxx

xxxx

"(5) The case has to be considered in the facts of the case of the writ petitioner in the light of the Government order. It does not amount to a final order. If the State has issued other Government orders also, dealing with the subject matter subsequently before passing the impugned order, the representation may be considered in the light of all the relevant Government orders as well as statutory rules. That will not prejudice the case of the appellants State as well as the writ petitioner.

(6) With the above clarifications, the writ appeal stands disposed of. No costs. (Consequently, connected miscellaneous petition is closed."

5. In W.P.No.24006 of 2013, filed by Dr.(Thiru.) P.Kirubakaran, Deputy Director, the Hon'ble High Court of Madras had directed the Government of Tamil Nadu to pass orders on the representation of Dr. (Thiru.) P.Kirubakaran, dated 07.06.2013, in the light of G.O. (Ms.) No.1159, Personnel and Administrative Reforms Department, dated 21.11.1984 and the order of the Hon'ble High Court in W.P.No.2573 of 2008 dated 25.11.2010. The Government had filed Writ Appeal No.393 of 2014 against this order and the writ appeal was disposed of by the Hon'ble Division Bench of the Madras High Court on 18.03.2014, by making it clear that the representation of the petitioner might be considered in the light of all the relevant government orders and statutory rules. The Hon'ble Division Bench in disposing of

the writ appeal also made it clear that the order of the Hon'ble High Court of Madras in the writ petition does not amount to a final order and that it would not prejudice either of the case of the Government or of Dr. (Thiru.) P.Kirubakaran. Hence, the order of the Hon'ble Division Bench in W.A. No.393 of 2014 does not decide any rights of parties and the Hon'ble High Court has merely directed that the representation of Dr. (Thiru.) P.Kirubakaran be disposed of and the Government may consider and pass necessary orders on the representation in the light of all the relevant government orders and statutory rules that may be found applicable. The orders passed by the Hon'ble High Court does not mandate that the Government must necessarily accede to the claims made by the petitioner but the Government has only been directed to pass orders as per the prevailing rules and orders.

6. The Government, in G.O. (Ms.) No.1159, Personnel & Administrative Reforms (PR.II) Department, dated 21.11.1984, revived the scheme of sanction of advance increments for acquisition of higher qualification, viz., Post-Graduate qualification in certain specialities such as Business Administration. Engineering. Agriculture and Medicines, which was in vogue prior to 05.09.1983, by cancelling the orders issued in G.O.(Ms.)No.843, Personnel and Administrative Reforms (F.R.II) Department, dated 05.09.1983 for the scheme of sanction of lumpsum grant. In Government Letter No.23270/F.R.I/85-I, Personnel and Administrative Reforms Department, dated 06.05.1985, certain clarifications were issued to G.O.(Ms.) No.1159, Personnel Administrative Reforms (FR.II) Department, dated 21.11.1984. However, the Hon'ble High Court of Madras, in its order dated 07.01.2009 in W.P.No.22933/2007, has observed that the clarification issued in the form of a letter cannot be allowed to either overtake or override the Government order issued in the matter. Hence, the Government, in G.O.(Ms.)No.97, Personnel & Administrative Reforms (FR.IV) Department, dated 05.07.2010, issued the following amendments to G.O.(Ms.)No.1159, Personnel and Administrative Reforms (F.R.II) Department, dated 21.11.1984 and it was also ordered that the amendments will come into force with effect from 05.07.2010:-

a) The scheme of sanction of advance increments is applicable to officers upto and inclusive of second level officers below the Heads of Departments;

b) If the special qualification is prescribed as one of the requisite qualifications for appointment to any post or where the scale of pay for such post is prescribed taking into account the special qualification for appointment to any post or where the scale of pay for such post is prescribed taking into account the special qualification, the scheme will not be applicable to those acquiring the special Qualification:

c) Where the Government have spent money on an officer by giving him study leave and allowances or have treated the study

period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other than Account Test for Subordinate Officers Part-I is made essential for further promotion, he is not entitled to the benefit:

d) In respect of those for whom the Post-Graduate qualification is made essential for further promotion, they are also not entitled for the benefit.

The Government, in G.O. (Ms.) No.154, Personnel and Administrative Reforms (F.R.IV) Department, dated 26.10.2010. dispensed with the system of sanction of two advance increments to those who already possess the post-graduate degree in Business Administration and accordingly cancelled it.

7. On examination of the request of the individual for sanction of advance increments for acquisition of Ph.D. degree qualification in the light of the above said order of the Hon'ble Division Bench of the Madras High Court, dated 18.03.2014 in Writ Appeal No.393/2014 and in the light of the prevailing Statutory Rules and Government orders relevant to the issue, the following aspects have been found:-

i) that orders have been issued by the Government in G.O. (Ms.) No.1159, Personnel & Administrative Reforms (FR.II) Department, dated 21.11.1984 for sanction of advance increment for possessing Post-Graduate qualifications in certain specialities such as Business Administration, Engineering, Agriculture and Medicine and amendment has been issued in G.O. (Ms.) No.97. Personnel & Administrative Reforms (FR.IV) Department, dated 05.07.2010 wherein certain general conditions to grant advance increment for the acquisition of higher qualification have been laid down. Based on these general conditions, special orders have to be issued by the administrative departments of Secretariat concerned in consultation with the Finance Department for the grant of advance increment for the acquisition of higher (Post-Graduate) qualifications. Claim could not be made by a staff solely on the basis of a general order:

ii) that the administrative department of the Secretariat concerned in the case of Dr. (Thiru.) P.Kirubakaran, Deputy Director, is the Home Department and the Home Department has not issued any special order/scheme for sanction of advance increments to the Scientific Staff working in the Forensic Science Department for acquisition of M.Sc./Ph.D. degree qualifications, based on the general order issued by the Personnel & Administrative Reforms Department in G.O. (Ms.) No.1159, Personnel & Administrative Reforms Department, dated 21.11.1984. For e.g., the Law/Public Works/Agriculture Departments have issued orders for sanctioning advance increment to their staff working under their administrative control, for acquiring M.L/M.E./M.Sc. (Agriculture) degrees to Officers/Engineers/Agricultural Officers. Hence, the Home

Department, which is the administrative department for the Forensic Sciences Department cannot be compelled to issue a special order/scheme involving financial implication for such acquisition of Post-Graduate or Doctoral (Ph.D) qualifications:

iii) that there is no provision either in the Fundamental Rules or in the General Rules for the Tamil Nadu State and Subordinate Services or in the Special Rules for the Tamil Nadu Forensic Science Subordinate Service or in the Special Rules for the Tamil Nadu forensic Science Service, governing the service conditions of the staff of the Forensic Sciences Department, to sanction advance increment for acquisition of Ph.D. degree qualification. In the absence of statutory obligation, the Government could not be compelled to issue an executive order for advance increments;

iv) that the orders issued in G.O.(Ms.)No.1159, Personnel and Administrative Reforms (F.R.II) Department, dated 21.11.1984, is applicable only for the persons acquiring higher qualification, i.e.. Post-Graduate qualification in Engineering, Agriculture and Medicine and it will not apply to the cases of persons, who acquire post-graduate and Ph.D. degree qualifications in Arts and Science including Forensic Science. As per the said Government order, for the persons, for whom the Post-Graduate qualification is made essential for further promotion, they are not entitled for the benefit of advance increment. In G.O. (Ms.) No.764, Home (Police.XVIII) Department, dated 23.08.2002, M.Sc., qualification is prescribed for Scientific Officers for promotion as Assistant Directors in the Forensic Sciences Department. As such, even for acquisition of a M.Sc. qualification, a Scientific Officer is not eligible for advance increment. Such being the case, advance increment cannot be claimed for acquisition of Ph.D. degree qualification;

v) that the orders in G.O.(Ms.)No.1159, Personnel and Administrative Reforms (F.R.II) Department, dated 21.11.1984 was issued at a primitive time when acquiring post-graduate qualification in Business Administration. Engineering, Agriculture and Medicine was rare and no avenues other than regular mode existed then to acquire such qualification. However, in the changed scenario, such circumstances do not exist. If the above said general order is taken to be relevant to the present day situation also, then it will lead to a situation where Government have to sanction advance increments to almost all the Government servants, who are possessing Post-Graduate and other special qualifications in the faculties of Arts and Science, even at the time of their entry to Government service itself;

vi) that the Government has passed orders in G.O.(Ms.) No.154, Personnel & Administrative Reforms Department, dated 26.10.2010, discontinuing the sanction of advance increments for acquiring M.B.A. degree qualification already in vogue from the year 1970;

vii) that the orders in G.O.(Ms.)No.272, Home (Police.XVIII) Department, dated 11.05.2011 was issued by the Government inadvertently and similarly placed persons cannot cite a wrong order as a precedent and it cannot be followed in perpetuity as it involves recurring financial implications to the State Government:

viii) that the matter of sanction of advance increment to the Government servants for acquiring higher qualification is a service matter involving financial implication. The general conditions of service of the Government servants are governed by the Statutory Rules, viz., Fundamental Rules and General Rules for the Tamil Nadu State and Subordinate Services and the Government, being the Employer, is bound to follow the statutory rules in the matter of sanction of annual increments including advance increments. Request for sanction of advance increment for acquiring Ph.D. degree qualification cannot be complied in the absence of statutory provisions and without considering the financial implication caused to the State Exchequer;

ix) that the staff of the Forensic Sciences Department is doing only analysis work in the Forensic Science Laboratory, i.e., analysing the samples received from the Police, Courts, etc., and it requires only possession of a M.Sc. degree qualification and acquisition of Ph.D. degree is not at all required as per the Statutory Rules governing the department and in the larger public interest. The Ph.D. degree is an essential and requisite qualification only for the Teaching Faculties in the Higher Educational Institutions, viz., Collegiate Education Department and the Universities;

x) that, over a period of time, the number of universities has proliferated manifold and almost all the universities offer Ph.D. degree through Distance Education and Part-time mode. The fact remains that, such doctoral programmes are utilised fully only in a few departments, viz., Collegiate Education. Research & Analysis, Departments of Universities, etc. As such, the Ph.D. degree qualification acquired by the staff of the Forensic Sciences Department will not materially impact their services in discharging their day-to-day scientific duties relating to analysis work.

xi) that the Government could not spend the taxpayers money arbitrarily by sanctioning the advance increments to the Scientific staff of the Forensic Sciences Department, since they have been given good scales of pay, as detailed below:-

Sl. No.	Name of the post	Pay Band	Grade Pay Rs.
1.	Director	PB-4 Rs.37400 - 67000	9500
2.	Additional Director	PB-4 Rs.37400 - 67000	8700

Sl. No.	Name of the post	Pay Band	Grade Pay Rs.
3.	Joint Director	PB-3 Rs.15600 - 39100	7600
4.	Deputy Director	PB-3 Rs.15600 - 39100	6600
5.	Assistant Director	PB-3 Rs.15600 - 39100	5400
6.	Scientific Officer	PB-2 Rs.9300 - 34800	5100
7.	Junior Scientific Officer	PB-2 Rs.9300 - 34800	4800

xii) that, in the absence of any statutory requirement for acquisition of highest qualifications like Ph.D. degree, if the request of the individual for sanction of advance increment is complied with, then it will open the Hood gates and similarly placed persons in the forensic Sciences Department and other departments of the Government will claim such sanction of advance increment leading to heavy financial outflow from the State Exchequer, which will be detrimental to the smooth financial administration of the State in the larger public interest;

xiii) that the Ph.D. degree qualification acquired by the individual is out of his own interest without any statutory obligation and the Government is not bound to sanction advance increment for such acquisition. Mere permission, granted by the Director. Forensic Sciences Department, to pursue Ph.D. degree in a part-time manner, do not binds or mandates the Government to sanction advance increments and the permission also do not confer any rights on the individual to claim advance increments from the Government after such acquisition;

xiv) that, decision regarding sanction of advance increments for acquisition of the highest qualifications is in the exclusive domain of policy decisions of the Government and it is the prerogative of the Government to decide as to whether such sanction should be accorded or not in the interest of the general public;

8. With regard to the sanction of advance increment by the Government to one Dr. (Thiru.) G.Thirunavukkarasu, then Scientific Officer, Forensic Sciences Department, in G.O. (Ms.) No.272, Home (Police.XVIII) Department, dated 11.05.2011, for having acquired Ph.D. degree qualification, it is observed that the Hon'ble Supreme Court of India, in "State of Bihar vs. Upendra Narayan Singh and others [2009 (4) SCALE 282]. while deciding the issue as to whether the benefit of a wrong order can be claimed by others, has held as follows:-

"By now, it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a court in a negative manner. If an illegality or irregularity has been committed in favour of an individual or group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order."

It is seen from the aforesaid observations of the Hon'ble Supreme Court of India, if a wrong order is passed by a judicial forum, others cannot claim to extend the same to their cases. The Government, therefore, observes that the orders issued in the above said order, i.e., G.O. (Ms.) No.272. Home (Police.XVIII) Department, dated 11.05.2011, is an isolated case and a wrong order/precedent cannot be followed in perpetuity for the similarly placed persons.

9. The Hon'ble Supreme Court of India, while considering the scope of the orders "to consider", in the case of A.P. SRTC vs. G.Srinivas Reddy [(2006) 3 SCC 674=2006, 3 Law Weekly 170] has held as follows:-

"20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter"

It is seen from the observations of the Hon'ble Supreme Court of India that, if no time limit is fixed by the Hon'ble Court while passing orders, the petitioner has to make another application to the Hon'ble Court for fixing time limit for issue of orders. The Government, therefore, observes that, no contempt will arise out of the orders of the Hon'ble Division Bench of the High Court of Madras dated 18.03.2014 in Writ Appeal No.393/2014.

10. In the light of the grounds discussed in paragraphs 5 to 9 above, the Government have decided to reject the request of Dr. (Thiru.) P.Kirubakaran, Deputy Director, Forensic Sciences Department, for sanction of three advance increments to him for having acquired Ph.D. degree qualification.

11. Accordingly, the Government rejects the request of Dr. (Thiru.) P.Kirubakaran. Deputy Director, Forensic Sciences Department, for sanction of three advance increments to him for

having acquired Ph.D. degree qualification, as devoid of merit and not feasible compliance.

(By order of the Governor)

APURVA VARMA
PRINCIPAL SECRETARY TO GOVERNMENT.

14. Object of acquiring higher educational qualification is to improve the capacity and quality of performance in discharging the duty, improve their efficiency with better knowledge of the subject, which they have acquired.

15. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the appellant argued that advance increment has been granted in the case of teaching, engineering and other subjects and not to those who have acquired Ph.D in Forensic Sciences, as the duties performed by the Laboratory Assistants, are only technical. Qualifications for the post of Scientific Officers may be M.Sc., in Forensic Sciences. M.Sc., cannot be equivalent to Ph.D, the highest qualification in any subject. Acquisition of higher educational qualification always helps to increase the performance, considering the nature of duties and responsibilities. M.Phil or Ph.D., in Forensic Sciences would certainly enhance the efficiency in discharging duties of the Forensic Officers.

16. Argument of the learned Special Government Pleader that acquisition of higher educational qualification can improve the performance only in the field of teaching, engineering and agriculture, and acquisition of Ph.D., the highest degree in the subject, in the case on hand, would not help the Forensic Officers, cannot be accepted, for the reason that acquiring of higher educational qualification would certainly enrich one's knowledge, and better results in investigation.

17. Contention of the learned Special Government Pleader that unlike in teaching, engineering and other subjects, Government have not issued any orders, enabling grant of advance increment, cannot be accepted, for the reason that G.O.(Ms). No.1159, Personnel & Administrative Reforms Department, dated 21.11.1984, covers the field and at the risk of repetition, the same is reproduced hereunder:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Fundamental Rules - Scheme of Sanction of Advance increments - Revival - Orders - Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (F.R.II) DEPARTMENT
G.O. (Ms) .No.1159

Dated: 21-11-1984

Read:

1. G.O. (Ms) No. 531, Finance Department, dated 25.04.1963.
2. G.O. (Ms) No. 825, Personnel and Administrative Reforms (F.R.I.) Department, dated 6.7.1977.
3. G.O. (Ms) No. 1195, Personnel and Administrative Reforms (F.R.I.) Department, dated 27.10.1978.
4. G.O. (Ms) No. 843, Personnel and Administrative Reforms (F.R.I.) Department, dated 5.9.1983.

ORDER:

In the Government Order 4th read above, the scheme of sanction of advance increments for acquisition of higher qualifications was replaced by the scheme of sanction of lumpsum grant. The orders took effect from 5.9.1983. Departments of Secretariat were requested to determine the quantum of lumpsum / grant in lieu of advance increments in consultation with Personnel and Administrative Reforms and Finance Departments.

2. Several representations have been received requesting that the advance increment scheme may be continued, Government have carefully examined the request and have decided to revive the scheme of sanction of advance increments. Accordingly the Government direct that the scheme of sanction of advance increments for acquisition of higher qualifications in vogue prior to 5.9.1983 be revived with immediate effect. The orders issued in the Government Order fourth read above and the clarifications issued there under from time to time be cancelled subject to the modification specified in para 3 below.

3. Such of the Officers who have already availed themselves of the lumpsum grant under G.O. Ms. No. 843, Personnel and Administrative Reforms (F.R.II) Department, dated 5.9.1983 and permitted to retain the benefit. However, if a person who has already drawn the lumpsum grant wishes to avail himself of the scheme of sanction of advances increment, he shall refund the lumpsum grant in one installment and then apply to the concerned authority for sanction of advance increment.

4. These orders will apply to Government Servants including teachers.

5. Departments of Secretariat are requested to take action in accordance with the orders in paras 1 to 4 above.

6. This order issues with the concurrence of Finance Department - vide its U.O. No. 4056/FS/84, dated 9.11.1984.

(BY ORDER OF THE GOVERNOR)

T.V. ANTHONY

SECRETARY TO GOVERNMENT

18. Reading of the Government Order makes it clear that only the mode of payment is varied. Quoting Fundamental Rules or General Rules, may not of any relevance to the case on hand, as G.O. (Ms) .No.1159, Personnel & Administrative Reforms Department,

dated 21.11.1984, takes care of granting advance increments, in the case of acquiring higher educational qualification.

19. Contention of the appellant that if grant of advance increment is extended to those in service for acquiring higher educational qualification, then, whoever possess special qualification in Arts and Science, even at the time of entry, would claim adverse increment, is a mere apprehension. Advance increment is given only to those, who, by acquiring higher educational qualification, in the discharge of the nature of duties and responsibilities, improve their quality of work, for the betterment of the department.

20. G.O.(Ms).No.1159, Personnel & Administrative Reforms Department, dated 21.11.1984, is applicable upto second level officers below Head of the Departments and subject to other conditions. In Virender Parshad and others vs. State of Haryana and others, reported in 2013 (1) ILR (P&H) 479, advance increment to those in the judicial service, with a ML Degree, was granted. In the light of Shetty Commission's report, and by observing that it is discretionary, the Court held thus:-

(1). The petitioners are Judicial Officers serving in the State of Haryana. All of them have done their Masters in Law. They seek quashing of the Haryana Government Instructions dated 19.05.2011 (Annexure P6) whereby the benefit of three additional increments on acquiring a Degree in LL.M. has been restricted qua those Judicial Officers only who possess the LL.M. Degree at the time of joining service and not to those who obtain such Degree subsequently. The petitioners have obtained their Degrees in LL.M. admittedly while in service. (2). In All India Judges' Association v. Union of India & Ors., (2002) 4 SCC 247, the Hon'ble Supreme Court had issued several directions for the improvement of service conditions including reasonable hike in the pay- scales of Judicial Officers. The recommendations made by the First National Judicial Pay Commission, popularly known as "Shetty Commission" in this regard, including for the grant of three advance increments to Judicial Officers having Post-graduate degree in Law, were also accepted.

(3). While recommending uniform pattern of eligibility conditions and pay structure throughout the country for initial entry in the Judicial Services, 'Shetty Commission' also considered the desirability of granting 'Additional Benefit for Higher Qualification'. The Commission referred to the Service Rules and conditions of service prevailing in different States at the entry level and took notice in para 8.46 of its Report Vol-II of the fact that except Delhi and Rajasthan, in none of the States additional benefit to a selected candidate possessing higher qualification was admissible. The Commission thereafter made the following recommendations in paras 8.48 and 8.49 of the report (Vol-II) :-

"8.48 If selected candidates are having a higher qualification like Post-Graduation in Law, we recommend that three advance increments be given as it is allowed by the Delhi Administration. It is an acknowledged fact that Post-Graduation in Law is a difficult course and it is better to reward appropriately such candidates.

8.49 But we do not propose to suggest any advance increments to those who are having more experience as Advocate than the minimum prescribed. Giving any advance increment for additional Bar practice is not proper. It should not be a bonus for those who have not been able to make their way immediately after acquiring the minimum qualification."

(4). The Supreme Court in the cited decision directed all the States to implement these recommendations and grant the benefit of three additional increments to those possessing higher qualification. The reluctant executive with a clear agenda to frustrate these directions, started misinterpreting the Shetty Commission recommendations to mean as if the three advance increments in issue were to be adjusted against future annual increments of the eligible Judicial Officers. Such like misconstruction given to these recommendations by the State of Punjab was set at naught by one of us (Surya Kant, J) in CWP No.6954 of 2009 (Priya Sood v. State of Punjab & Ors.) decided on 24.01.2011, holding as follows:-

"8] The expression "advance" as mentioned in paragraph 8.48 of the recommendations does not mean that three increments granted to the petitioner or other judicial officers possessing higher qualifications are a temporary measure only to be adjusted against their future annual increments to which they are otherwise entitled to as a matter of right save these are with-held under Rule 4.7 of the C.S.R. (ibid).

9] I say so for the reason that the Shetty Commission has referred to the phrases 'additional' and 'advance' both in Para 8.46 of its recommendations inter-changeably and since the solitary object of these recommendations was to grant an extra benefit to these officers who join judicial services with higher qualifications, the word 'advance' shall connote the same meaning as the word 'additional' is understood in general parlance." (Emphasis applied)

(5). The unsuccessful challenge at the instance of the High Court was turned down by a Division Bench of this Court in LPA No.970 of 2011 decided on 30.05.2011 (Annexure P10) with an additional reason to the following effect:-

"In the present case the degree of Masters of Laws would certainly bring efficiency in discharging duties by a Judicial Officer in comparison to those who do not possess such a degree. There is no real benefit of advancing advance increments if in the due course of time the writ petitioner-respondent No. 1 is to become equal to those who do not have additional higher qualification. Such an interpretation adopted by the appellant

would not advance the basic object of the recommendation made by the Shetty Pay Commission. Therefore, we are of the view that the instant appeal does not merit admission and the view taken by the learned Single Judge deserves to be upheld."

(Emphasis applied)

(6). The Special Leave to Appeal was also turned down by the Hon'ble Supreme Court.

(7). We are informed that the Judicial Officers in the State of Punjab have still not been able to harvest their dues due to one or the other technicalities raised by the establishment.

(8). State of Haryana also did not lag behind. Firstly, it issued a circular dated 28.10.2010 (Annexure P5) saying that the three advance increments on account of LL.M. Degree will be provided from the date of issue of letter dated 30.03.2010 and only '...at the entry point those who have post-graduate qualification i.e. LL.M. Degree'. (9). Meanwhile, some of the Judicial Offices of Haryana approached this Court in CWP No.5966 of 2011 (Ritu Garg and others v. Punjab & Haryana High Court &Anr.) which was allowed by a learned Single Judge on 22.07.2011 following the above-cited decisions in the Punjab case.

(10). The impugned circular dated 19.05.2011 restricting the benefit of three increments to those Judicial Officers 'who possess the qualification of LL.M. at the time of joining of service and not to those who obtained the degree of LL.M. subsequently', was issued pending the above-stated writ petition.

(11). The above-reproduced restricting clause does deprive the petitioners of the benefit of three increments as they have obtained LL.M. Degree after joining the service.

(12). The question that arises for our consideration is whether the classification sought to be made between the Judicial Officers who possess LL.M. Degree at the time of joining service and those who obtain the same subsequent to their appointment, is a reasonable classification based upon an intelligible criteria?

(13). A somewhat similar artificial distinction drawn between the Masters appointed with higher qualification and those acquiring higher qualification while in service, for the purpose of grant of higher pay, was annulled by a Division Bench of this Court in Rattan Singh v. State of Haryana 1995 (1) SCT 711, holding as follows:- "11. Circular dated 9.3.1990 issued by the Government of Haryana, in our opinion, cannot be used to deny relief to the petitioners. A careful perusal of that circular shows that the issue of the same is nothing but an attempt to frustrate the rights of the existing teachers to get higher pay from the date they acquired higher qualifications. Distinction sought to be made out between the persons appointed as Masters with higher qualifications and those acquiring higher qualification while in service is illusory and unwarranted. A similar situation was considered by the Supreme Court in PK Ramachandra Iyer and Others v. Union of India, AIR 1984 SC 541.

In that case petitioners, who were holding the posts of professors were denied higher pay scale because they did not possess a particular qualification. While upholding their claim for grant of higher pay scale according to the principle of equal pay for equal work, the Supreme Court observed..." (Emphasis applied)

(14). The right to equality in pay scale amongst 'two classes of employees performing identical or similar duties and carrying out same functions with the same measure of responsibility having same academic qualifications' has been approved by the Apex Court in a catena of decisions including in V.Markendeya and others v. State of Andhra Pradesh & Ors., (1989) 3 SCC 191.

(15). We are, however, conscious of the fact that wherever the classification made by the State in giving different treatment to the two classes of employees is founded upon a rational criteria and has nexus with the object sought to be achieved, the allegation of invidious discrimination must fail. The Court would, thus, before forming an opinion in this regard shall consider various factors like nature of duties, functions, measures of responsibility and educational qualifications etc. Applying these yardsticks, we find no tangible distinction amongst the Judicial Officers possessing higher qualification of LL.M. whether obtained before or after joining the Judicial services. If the Degree of Masters of Law brings efficiency and improves quality of discharging duties by a Judicial Officers as held by this Court in Priya Sood's case (supra), we fail to understand as to why such a qualitative advantage will not be achieved by an Officer who does LL.M. after joining the Service?

(16). It shall be beneficial at this stage to refer to the Circular dated 04.12.1961 (Annexure P7) issued by the erstwhile State of Punjab laying emphasis on permitting the Government servants to improve their academic qualifications as "the acquisition of higher qualifications is always beneficial and broadens the outlook of an individual who should naturally give better work to Government..."

(17). The extent of hostile discrimination against the Judicial Officers or complete non-application of mind behind issuance of the impugned letter is writ large in the Haryana Government's Finance Department Circular dated 30.08.2011 (Annexure P14) issued for the "grant of two advance increments to the Junior Engineers on acquiring AMIE or an equivalent degree during service". The Circular says that a Junior Engineer if acquires higher qualification of AMIE or an equivalent degree during service is entitled to two advance increments. There is nothing on record to justify the somersault taken in the case of Judicial Officers acquiring higher qualification of LL.M. while in service to whom the benefit of three increments is being denied. If the acquisition of higher qualification in engineering services improves the work efficiency, why the

qualification of LL.M. will also not broaden the outlook of a Judicial Officer and enrich his knowledge for quality decisions?

(18). We now advert to the justification advanced by the State Government in its reply/affidavit. It is claimed that the Shetty Commission in para 8.48 has recommended three advance increments only "if selected candidates are having a higher qualification like post-graduation in law...". In other words, the higher qualification should be possessed by the Officer at the time of his/her selection.

(19). The above-noticed plea, in our considered view, is wholly unjustified. Firstly, Shetty Commission has nowhere recommended that three advance increments are not to be granted to those Officers who acquire higher qualification while in service. The phrase "selected candidates.... having higher qualification" does not and cannot mean that if higher qualification is acquired by the selected candidates after their appointment, it would not improve their efficiency with better knowledge of Law. Secondly, the Judicial Officers having Post-graduate Degree in Law before appointment and those who acquire such Degree after joining the service, constitute one homogenous class and the artificial classification to discriminate against the latter category of Officers does not satisfy the test of equality within the meaning of Articles 14 & 16 of the Constitution. Thirdly, the classification professed in the case of Judicial Officers contradicts the State when confronted with the other services like Junior Engineers to whom benefit of advance increments, on acquisition of higher qualification 'during service', has been expressly granted vide circular dated 30.08.2011 (Annexure P14).

(20). For the reasons afore-stated, we allow this writ petition and quash the impugned circular dated 19.05.2011 (Annexure P6) to the extent it denies the benefit of three increments to those Judicial Officers who have acquired/acquire higher qualification of LL.M. after joining the service. We further direct that :-

i. the benefit of three additional increments shall be admissible to the petitioners as well as other similarly placed Judicial Officers;

ii. the only permissible distinction shall be that the Judicial Officers who acquire LL.M. Degree before joining the service shall be entitled to additional increments from the date of joining the service, while those who have acquired/acquire the same after joining the service shall be entitled to these increments from the date of acquisition of the higher qualification of LL.M.;

iii. the three increments granted to the Judicial Officers on acquisition of LL.M. Degree shall be treated as 'additional increments' in the same manner as has been directed by this Court in Priya Sood's case (Punjab matter);

iv. the additional increments shall continue to be drawn by

the Judicial Officers on their further promotion and/or placement in higher pay scale, as the case may be.

(21). No costs. Dasti."

21. Contention of the appellant that it is wrong to follow Dr.Thirunavukkurasu's case, cannot be accepted. On the other hand, Dr.Thirunavukkurasu's case, squarely applies to the case on hand. Analysing the case and giving due consideration to the challenge, we are not inclined to reverse the order of the writ court.

22. In the result, instant writ appeal is dismissed. No Costs. Consequently the connected Civil Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Home Department (Police.18),
Fort St.George,
Chennai - 600 009.

2. The Director,
Forensic Science Department,
30-A, Kamarajar Salai,
Mylapore, Chennai - 600 004.

WA No.3378 of 2019

and CMP No.21655 of 2019

SS(CO)

SP(20/11/2019)

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