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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD) Nos.4995, 4996, 4997 & 4998 of 2015
and
M.P.(MD) Nos.1 & 2 of 2015 (in all W.Ps.)

S.Arunachalam ... Petitioner in W.P.(MD) No.4995 / 2015

R.Bhuvaneshwari ... Petitioner in W.P.(MD) No.4996 / 2015

V.Paramasivam ... Petitioner in W.P.(MD) No.4997 / 2015

P.Amirtham ... Petitioner in W.P.(MD) No.4998 / 2015

vs.

1.The District Elementary Educational Officer
Madurai

2.The Assistant Elementary Educational Officer
Madurai South, Madurai

3.Nadar Vidyasalai Middle School
rep.by its Secretary, South Gade, Madurai
... Respondents in all W.Ps.

PRAYER (in all W.Ps.): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the impugned order of the 2nd respondent in Na.Ka.No.155/A1/2015 dated 04.03.2015 and the consequential orders issued by the 3rd respondent in proceedings dated 05.03.2015, No.Nil and proceedings dated 18.03.2015, No.Nil, quash the same.

For Petitioner : Mr.R.Subramanian
(in all W.Ps.)
For Respondents : Mrs.S.Srimathi
(in all W.Ps.) Special Government Pleader for R1 & R2
Mr.B.Rooban for R3

C O M M O N O R D E R

The grievance of the writ petitioners is that the incentive increment as applicable to them with reference to the Government Orders in force, is not paid.

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2. A Teacher is entitled to incentive increment for possessing additional qualification and two such incentive increments are permissible throughout his / her service.

3. In the present case on hand, it is pleaded that the writ petitioners have not been granted even one incentive increment with reference to the Government Orders in force. However, this Court is of the view that all these factors are to be ascertained with reference to the qualifications acquired by the writ petitioners and accordingly, the incentive increment is to be granted strictly in accordance with the scheme of grant of incentive increment and as per the Government Orders in force.

4. In this regard, this Court has also considered the issue with regard to grant of incentive increment, in detail vide order dated 12.04.2019 in W.P.No.6970 of 2018. The relevant Paragraphs of the said order are extracted hereunder:

> *"5.In respect of grant of incentive increments, this Court is also deciding the matter based on the orders of the Hon'ble Division Bench that the Teachers is entitled to get two incentive increments for acquiring higher educational qualification in accordance with the terms and conditions stipulated in the Government Order. The various Government orders in the matter of grant of incentive increments had been adjudicated by this Court elaborately.*
>
> *6.The learned Additional Government Pleader appearing on behalf of the respondents states that as per G.O.Ms.No.107 Education Department dated 20.01.1976, the writ petitioners are not entitled for any further increments. This Court is of an opinion that a teacher on acquisition of higher qualifications is entitled for two incentive increments amounting to four increments in as per the scheme. The grant of incentive increments is required to be granted on all the teachers on acquisition of higher educational qualification. The issue in this regard has been elaborately dealt with by this Court in batch of writ petitions in W.P.No.6408 of 2014 dated 20.08.2018, and the relevant paragraphs are extracted hereunder:*
>
> > *"3.The entire case of the writ petitioner rest on the ground that the similarly placed persons, who served in the promotional cadre of P.G.Assistant were sanctioned with the third incentive increment on acquisition of higher qualification of M.Phil., Degree. Thus, the same benefit is to be extended to the writ petitioner also.*
> >
> > *4.However, the learned counsel appearing on behalf of the writ petitioner raised certain*

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questions in respect of grant of incentive increment for the Teachers, who are working in Education Department. Thus, this Court has to deal with those Government orders and the judgments referred for the purpose of regulating these incentive increments to be granted to the Teachers, who are working in Education Department and acquiring additional qualifications for the purpose of getting these incentive increments.

5.The very basis for grant of incentive increment is to encourage the school teachers to acquire additional qualification, which would be useful for the students and for the improvement of the Education System in our great Nation. The Government, at the first instance, issued G.O.Ms.No.42, Education Department dated 10th January 1969, stating that "the Government have already accepted in principle that incentive payments and awards should be given to the teachers in Schools who acquire higher educational qualifications". Accordingly, the proposal of the Director of School Education has been accepted and the eligibility criteria also has been fixed in the above Government orders. However, the original order did not contain several other Degrees and circumstances, which aroused subsequently on account of various developments in the Education Department. The prevailing situation in the year 1969 was considered and the Government order was passed. However, the concept of grant of incentive increment continued even thereafter in respect of the acquisition of additional higher qualifications by the Teachers. In continuation of the said G.O.Ms.No.42, Education Department, the Government issued G.O.Ms.No.107, Education Department, dated 20.01.1976. In the said G.O., the benefit of the incentive increments were granted to the Tamil Pandits also.

6.The Government issued Letter No.590, Education Department dated 29th March 1976 and the letter which reads as follows:

GOVERNMENT OF TAMIL NADU
EDUCATION DEPARTMENT
Letter No.590, Dated 29th March 1976.

From
Thiru.K.Lakshmlkanthan Bharathi, I.A.S.,
Joint Secretary to Government,
Education Department, Madras-9.

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To
The Director of School Education,
Madras-6.

Sub: Education - Secretary - Thiru.N.R.Ramanujam, Headmaster- Govt.(BOARD)High School, Siruvachagam - Sanction of advance increments clarified.

Ref: Your Letter No.127147/PD.13/74, Dt. 06.05.1972 and16.12.75 and 12.02.1976.

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I am directed to inform that the maximum number of advance increments which a teacher can get for acquiring higher educational qualification under the scheme of Incentive Increments to school teachers who acquire higher qualification is four vide para(ii) to Annexure to G.O.Ms.No.42, Education dt.10.01.1969. Hence in the case of teachers who got already four advance increments for acquiring higher qualification, the question of sanctioning further advance increments to them either in the old scale of pay or in the revised scale of pay does not arise.

I am also directed to request that instructions may be issued to subordinate officers in this regard and recover the amount from the concerned teachers if fifth and sixth advance increments have been sanctioned to any teacher. A report in this regard may be sent to Government at an early date.

Sd/ X X X X
Joint Secretary to Government
/true copy/

7.Thereafter, the Government issued G.O.Ms.No.747, Finance(Pay Cell) Department dated 18th August 1986. Pursuant to the recommendations of the One Man Committee in respect of grant of incentive increment for M.Ed., qualification, the said Government Order has been issued. Accordingly, the following orders are passed:

> *"2.The Government accept the recommendation of the One Man Committee and issue the following orders:*
>
> *i) The P.G.Teachers and Headmasters of Higher Secondary Schools who possess or acquired postgraduate qualification in education i.e., M.Ed., Degree shall be granted two advance Increments in the scale of pay admissible to them.*
>
> *ii) The increment now sanctioned shall be granted in addition to their normal annual increments.*
>
> *iii) Such of the teachers/Headmasters who have already availed themselves of the incentive*

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increments for M.Ed., qualification under the existing scheme of incentive payments to teachers for acquiring higher qualifications are not eligible to draw the increments now sanctioned in this order.

iv) These orders will apply to all higher secondary schools under all types of Managements.

v) These orders shall take effect from 1.4.1986."

8.In G.O.Ms.No.624, Education (E2) Department dated 13.07.1992, the Government directed that the incentive increment to the School Teachers for acquiring higher qualification to be followed subject to the conditions as enumerated below:-

"(i) Sanction of incentive increments to a teacher for acquiring higher qualification in a particular subject shall be subject to the condition that the teacher will also be requiring to teach that additional subject based upon needs. This would be in addition to the subject the teacher used to teach.

(ii) In respect of past cases and those enrolled for courses of higher studies upto the academic year 1991-92, the restriction imposed in G.O.Ms.No.907 P & R (FRII) Department dated 17.09.1986, shall be relaxed to cover really relevant courses, covering all subjects in the School curriculum, the Director of School Education shall judge the relevance. In such cases no arrears of the incentive increment shall be allowed. Monetary benefit of incentive increments in such cases shall be allowed with effect from the date of issue of these orders.

(iii) In respect of teachers enrolling during 1992-93 and after, sanction of increments shall be restricted to developing areas of study and subjects where teacher shortage has been indentified. The Director of School Education will indentify the subject for purposes of incentive increments in which teachers will be encouraged to qualify in consultation with the Government in all future cases. The intention is to encourage the teachers to get higher qualification in those specially selected subjects.

(iv) In respect of Physical Education Teachers incentive increments will be sanctioned in future only in the area of physical Education with a view to upgrade physical Training. The

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Director of School Education will indentify the courses in this area also."

9.In respect of admissible number of incentive increments, the Government issued G.O.Ms.No.1023, Education, Science and Technology Department dated 09.12.1993, which states as follows:

"3.Based on the above orders of the High Court, the individual was allowed the 5th & 6th increments in the G.O.third read above. Persons placed on similar circumstances had also represented for sanction of 5th and 6th increments and it is considered that normally a decision taken in one case would be of general applicability and will have to be made applicable in all similar cases. But the real intention of the original scheme as envisaged in G.O.Ms.No.42, Education dated 10.01.1969 is to sanction advance increments for higher qualification to a maximum of 4 only. So, Government have decided to amend the original orders to bring out the intention of the scheme viz, the maximum admissible increments as four clearly. At the same time Government have decided to sanction the 5th and 6th advance increment allowed to the individual referred to able to all those who are placed under similar circumstances also.

4. Accordingly, the Government direct that Secondary Grade Teachers who got 2 advance increments for B.T. Or B.Ed., qualification in the Secondary Grade posts and then 2 advance increments for M.A., or M.Sc., qualification in the post of B.T.Assistant shall be eligible for 2 more advance increments if they have already obtained the M.Ed., qualification in the post of B.T.Assistant. This concession shall be admissible only too the past cases, i.e., to those who have already obtained the above qualification prior to the date of issue of these orders. In future, the maximum number of advance increments admissible to a Teacher for obtaining higher qualification under the orders first read above shall be four only."

10.In continuation of the above G.O.Ms.No.1023, the Government issued G.O.Ms.No.1024, Education, Science and Technology Department dated 09.12.1993, which reads as under:

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"2) Government have examined the need for allowing the 5th and 6th increment to persons

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placed in similar circumstances and issuing fresh orders setting out the fact of the admissibility of increments to future cases separately and accordingly orders were issued in the G.O.fourth read above. In para 5 in G.O.s first and third read above will be issued separately.

3) Government now issue the following amendments to the G.O.first and third above.

(i) In the annexure to G.O.Ms.No.42, Education dated 10.01.1969, for paragraph(ii) the following paragraphs shall be substituted, namely:-

(ii) A Secondary Grade Teacher who has passed B.T. Or B.Ed., degree examination and obtained two advance increments shall be eligible for another two advance increments for passing M.A., M.Sc or M.Ed., Degree while working either in the Secondary Grade post or in B.T/B.Ed., Assistant Post. A B.T.Teacher who after passing M.A., or M.Sc., and obtained two advance increments shall be eligible for another two advance increments is qualified M.Ed., Degree while working in B.T.Assistant Post or Headmaster post.

(ii) a) The maximum no. of advance increments which a Teacher can get under the scheme of incentive increments under this Government Order shall be four in his entire service."

(2) In G.O.Ms.No.746, Education dated 30.06.1989, for paragraph 4 the following paragraph shall be substituted, namely:-

(3) The Government have considered the orders of the High Court referred to in para 3 above and the request of Thiru. V.Asirvatham to allow two more advance increments to him for acquiring M.Ed., qualification."

(4) These Orders shall take effect from the date of issue."

11.In G.O.Ms.No.1170, Education, Science & Technology Department dated 20.12.1993, incentive increments to Post Graduate Teachers for possessing higher qualifications are issued. Accordingly, the Government issued the following orders:

"4.The Government accept the request of the Director of School Education and issue the following orders:

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(i) The Post Graduate Teachers who possess higher Qualification like one incentive increment

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(i.e.,) two advance increments. (ii) The Incentive Increment shall be given only to those who possess the said higher qualifications as on 01.03.1993 and the concession will not be extended in future."

12.In G.O.Ms.No.324, Education, Science and Technology Department(E2) dated 25.04.1995, certain clarifications in relation to the subjects for which incentive increments to be sanctioned are issued. Accordingly, the clarifications states as under:

"5. The Government accordingly direct that (i) The conditions (i) to (iii) in para 3 of G.O.Ms.No.624, Education dated 13.07.1992 be deleted.

(ii) For the sanction of incentive increments the subjects in the Higher Secondary Syllabus shall be relevant subjects.

(iii) In respect of teachers in Physical Education they are eligible for the incentive for higher qualification only in Physical Education.

(iv) These orders will take irrespective effect from 17.09.1986 to cover post cases. (v) The teachers who have a specialized higher qualification in subjects other than Higher Secondary Syllabus not be eligible for any incentive increment."

13.The amendment was issued in G.O.Ms.No.1170, the Government issued G.O.Ms.No.194, School Education(E2) Department dated 10.10.2006 and the amendment which reads as follows:

"In G.O.Ms.No.1170, Education Science and Technology Department dated 20.12.1993, the Para3 (ii) is Deleted"

14.Thereafter, the Government issued G.O.Ms.No.285, School Education Department dated 28.11.2007 in respect of award of second incentive increment to Headmasters of the Higher Secondary School for higher qualification such as M.Phil.,/Ph.D.,/PGDTE and the said G.O., which states as under:

"6.As per the Policy decision of the Government, two incentives(four increments) only may be granted to the teachers for the entire period of their service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed qualification during his service as Post Graduate Teachers and promoted to

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the Headmaster Post and after the promotion as Headmasters, on acquiring M.Phil/Ph.D/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O., is ordered."

15.In respect of Graduate Teachers after getting first incentive increment for M.A.,/M.Sc., Degrees, for getting second incentive addition to M.Ed., degree, M.Phil and Ph.D Degrees, the Government issued orders in G.O.(1D).No.18, School Education(E2) Department dated 18.01.2013, which reads as under: "The Government on careful scrutiny of the Director of School Education recommendation, Government has accepted for second incentive in addition to the first incentive for having M.A.,/M.Sc., qualification to graduate teachers as per G.O.Ms.No.1024, Education, Science and technology Department dated 09.12.1993 instead of sanctioning second incentive to M.Ed., it should be taken as M.Ed or M.Phil., or Ph.D., considering it for higher education with a condition that the order has been issued that a teacher in his/her service can have maximum two incentives alone. This orders has been issued with the concurrence of the Finance Department U.O.No.1436/Edn.II/2013 dated 11.01.2013."

16.The Government issued further clarifications in Letter No.129, School Education (SE5(2)) 2013-1 dated 17.07.2013 in respect of the Graduate Teachers after getting first incentive for M.A.,/M.Sc., second incentives for M.Phil., and Ph.D., Degree along with M.Ed degree, which reads as under:

> *"2.As per the request made by the Director of School Education, clarification issued for G.O. (1D)No.18, School Education(S2) Department dated 18.01.2013 as follows:*
>
> *As per G.O.(1D)No.18, School Education (S2) Department dated 18.01.2013, a Graduate teacher who have completed M.Ed., or M.Phil or Ph.D., will be considered for second incentive as it is a higher educational qualification. As such a graduate teacher can be benefitted with only two incentives in their total service period, and this order come to effect from the date of issue of this order that is from 18.01.2013."*

17.The amendment to G.O.(1D).No.18, School Education (S2) Department dated 18.01.2013 with the replacement of Graduate Teachers and High School Headmasters in place of Graduate Teachers, to enable

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them to receive Incentive Increment for higher studies like M.Phil., or Ph.D., the Government issued orders in G.O.(1D).No.31, School Education (S.E.5(2)) Department dated 12.02.2015 and the paragraph 3, which reads as under:

> *"3.Recommendations of the Director of School Education are carefully scrutinized and accepted that Graduate Teachers/High School Headmaster getting the first incentive for Higher Educational Qualification like M.A., and M.Sc., and Second Incentive Increment as per G.O.(Ms). No.1024, Education, Science and Technology Department, dated 09.12.1993, for Higher Educational Qualification of M.Ed., be taken as M.Ed or M.Phil or Ph.D. and orders are issued with the condition that a teacher for his total service can be sanctioned with two incentives. Moreover, it is ordered that this Incentive Increment can be sanctioned from 18.01.2013."*

18.Undoubtedly, the Government passed number of orders in respect of grant of incentive increment to the School Teachers on possession of the higher qualifications with a noble idea that such an acquisition of higher qualification by the Teachers would be of great help to the School students, while imparting education to them. The very concept of incentive increment had been introduced by the Government of Tamil Nadu to encourage the morale of the Teachers to acquire more higher qualification and utilize the knowledge, which they acquired through the higher education for the purpose of developing the educational system and the quality of teaching. The concept introduced initially in the year 1969, was originated from the Former Chief Minister, Sri.Annadurai and thereafter, the Government of Tamil Nadu issued number of orders by issuing clarifications and by incorporating new Degrees and other conditions for the purpose of regulating the incentive increments to be granted for the School Teachers serving in the Education Department. The grant of incentive increment, certainly has some relevance and meaning as far as the teaching faculties are concerned. However, the developments occurred subsequently after the issuance of G.O.Ms.No.42 in the year 1969, a doubt arises in the mind of the Court that later, the very concept has been attempted to be misused by the teacher's community at large with an idea to get more and more incentive increments by acquiring the Degree

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one way or other or through various Universities, knowing the fact that acquisition of such qualifications through correspondences course or through Open University will not of any avail or much help to the School Students. The idea developed in the minds of the Teachers are unambiguous that they acquire Degree somehow or other only for the purpose of getting incentive increment and the degrees acquired are certainly not utilized for the development of the educational system or the quality of teaching in the Schools in the State of Tamil Nadu. It is apparent that such Government Teachers are unable to produce more productivity compared to the Private Schools, who all are flourishing in the State of Tamil Nadu. The working pattern and the method of imparting education in the Government Schools are certainly not on par with the Private Schools in the State of Tamil Nadu. Undoubtedly, the Teachers working in the Government Schools are more qualified and they have been paid decent salary. However, this Court is unable to appreciate the mindset and the manner in which such Government Schools are maintained by these Teachers and the students are taught in the Schools. When the Government Teachers in the Education Department are getting a decent salary, certainly over and above the salary paid to the Private School Teachers in the State, they should work with conscious and they are expected to thrive hard for the upliftment of the children, who all are the backbone of our great Nation for the development. A sort of social welfare development is certainly required for these Teachers. Contrarily, they are interested in acquiring certain higher qualifications from certain unpopular Universities, who grant Degree without following the University Grants Commission Regulations (UGC) and thereafter, obtained an incentive increment from the Government in addition to the salary paid in accordance with the pay rules in force.

19.Incentive Increment is a special scheme and a concession provided to the School Teachers for the purpose of encouraging them to teach the students in a better manner. The Government certainly has to make an assessment after some years, whether the grant of incentive increments are certainly helpful for the development of the educational system and teaching quality in the Schools functioning under the Education Department. If the Teachers are unable to make any progress or unable to utilize the higher education for the purpose of improving the educational system and quality of teaching, then the Government is bound to

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review the scope of such special schemes like incentive increment. Incentive increment is not part and parcel of the pay rules in force. It is a special benefit granted to the Teachers in order to encourage them. Such a concession is to be regulated in accordance with the terms and conditions of the Government orders. A concession can never be claimed as a matter of right. A Concession is a concept, which is to be granted by the State only on certain special circumstances and in order to boost the morale of the teaching faculties in the Education Department. Thus, the claim of incentive increment can never be a legal right in normal circumstances. However, once the scheme is formulated for grant of such incentive increment, then the same should be implemented equally to all and there cannot be any discrimination amongst the Teachers. The principles to be followed is that uniform implementation of such schemes are mandatory and imminent. The authorities competent cannot implement such special schemes in a haphazard manner, thereby creating ambiguity and inequality amongst similarly placed persons. Thus, it is duty mandatory on the part of the authorities concerned to follow the scheme uniformly and without causing any discrimination amongst the similarly placed persons.

20.Now, the question arises, whether the writ petitioner is entitled to claim benefits of incentive increment on par with other similarly placed persons to whom a third incentive increment was granted based on the Court orders or by way of certain Government orders.

21.This Court has to consider the prevailing situation in the matter of incentive increments and large number of litigations moved before the Hon'ble High Court for grant of incentive increment by Teachers, by citing one order or the other or the Government orders. Right from the year 1969, the Government of Tamil Nadu has issued various orders then and there in respect of different categories in the Education Department. Whenever the benefit is to be extended to a particular Degree in respect of a cadre, then a separate Government order is issued. In the absence of the consolidated instructions in this regard, the same created greater anomaly in the minds of the implementing authorities. This apart, there is a possibility of misuse and abuse of the scheme itself by some authorities. In some cases, the authorities by wrongly interpreting the G.O., has granted third incentive increment. In some cases, the authorities

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have granted third incentive increment based on the order of the Court, directing the authorities to consider the representation. In other Batch of cases, the third incentive increments were granted based on the order passed by this Court by suppressing various other Government orders, which states that a Teacher is entitled to two incentive increments in his entire service. Various circumstances made the authorities to commit mistakes after mistakes and thereby caused an inequality and discrimination in respect of the implementation of the concept of incentive increment as per the original scheme introduced by the Government of Tamil Nadu. The scheme, right from the beginning had been implemented with the condition that a Teacher on acquisition of higher qualification is entitled to get two incentive increments in his entire service. It is not as if, in every promotional post, he will be get an incentive increment either in the original cadre or in the promotional cadre, totally two incentive increments are permitted for acquiring higher qualification in the entire service. This being the basic condition imposed for grant of incentive increment, the circumstances and the various Government orders issued then and there are absolutely abused by the Teacher's community and they have obtained orders one way or other, either from the Government or from the Courts by suppressing other Government orders, which clearly states that two incentive increments alone is permitted for a Teacher in his entire service.

22.Under these circumstances, this Court is of an opinion that the respondents ought to have issued a consolidated instructions in respect of grant of incentive increment to avoid all such confusions in the concept. However, the said exercise has not been done so far by the respondents and the earlier orders of this Court also is not clear about various other Government orders, which all are now placed before this Court by the learned Government Advocate.

23.The learned Government Advocate appearing on behalf of the respondents, relying on the Government order issued in G.O.Ms.No.285, School Education Department dated 28.11.2007 states that the said Government order relates to the award of second Incentive Increment to Headmasters of Higher Secondary Schools with higher qualification (M.Phil.,/Ph.D.,/PGDTE). Therefore, the said Government order is applicable to the writ petitioner. As per the said Government order, two incentives (four

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increments) only may be granted to the Teachers for the entire period of his service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed., qualification during his service as Post Graduate Teachers and promoted to the Headmaster Post and after the promotion as Headmasters, on acquiring M.Phil.,/Ph.D.,/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O. is ordered.

24.The learned Government Advocate is of an opinion that even in the said Government order, it is reiterated that a Teacher working in the cadre of B.T.Assistant/Higher Secondary School Headmaster, are entitled to get two incentive increments during the entire period of their service. Thus, the writ petitioner is not entitled for third incentive increment.

25.The learned counsel for the petitioner misconstrued that the language used as "Entire Period of Service" means that the service rendered by a Teacher in the particular cadre and cannot be interpreted as the entire services rendered by the petitioner in the whole service. Such an argument as advanced on behalf of the writ petitioner are certainly absurd and deserves no consideration at all. In the absence of any restrictions in respect of grant of incentive increments, an unguided situation would arise, where the Teachers on acquisition of every additional higher qualification would claim incentive increments and the same would lead to confusion and will create discrimination amongst the Teachers. The idea now mooted out by the petitioner is not the very object and purpose of the special scheme of incentive increment. The very idea is to encourage the Teachers by granting two incentive increments for acquiring higher educational qualifications. It is not as if, a Teacher can get three incentive increments or more than that in each and every cadre. Such a situation will create an unnecessary scope for the Teachers to acquire Degrees from various Universities in one way or other. Thus, the interpretation as mooted out by the petitioner has no merit consideration.

26.Promotions are granted periodically to the Teachers and based on the availability of vacancies. Under these circumstances, a Teacher cannot claim two incentive increments in one cadre and a third

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incentive increment in the promotional cadre. Such a concept can never be formulated in any of the Government orders now placed before this Court. Contrarily, the Government orders repeatedly emphasize that a Teacher is entitled to get two incentive increments in his entire service. By misinterpreting the separate Government orders issued for separate categories, the Teachers have taken undue advantage of the special concessional scheme and obtained third incentive increment in an illegal manner and in violation of the very purpose, object and the terms and conditions of the special concessional scheme. Thus, grant of third incentive increments for few Teachers occurred on account of wrong interpretation of the Government orders or by suppressing the other Government orders, which emphasize that a Teacher is entitled to get two incentive increments in his entire service. Thus, the situation arises on account of passing of various separate Government orders mislead the Teachers, who in turn suppressed certain Government orders and obtained third incentive increment in violation of the very condition of the scheme. Thus, a Teacher is not entitled for third incentive increment in a promotional cadre and a Teacher is entitled to get only two incentive increments in his entire service.

27.The special concessional scheme of grant of incentive increments are not available to the employees of the other Departments in the Government of Tamil Nadu. This concession was granted to the Teachers working in the School Education Department as a special scheme and in addition to the pay rules in force. Thus, the concession granted must be implemented uniformly and without causing any discriminations or deviations. The concession of incentive increment can never be granted as a matter of legal right, the same can be granted as a right only in accordance with the terms and conditions of the scheme itself. Thus, the uniform implementation of the scheme by the competent authorities are certainly warranted and the authorities deviate the terms and conditions of the scheme are liable to be prosecuted and suitable disciplinary proceedings are to be initiated against such officials by the higher officials of the Department. In this regard, a consolidated instructions are to be issued to the subordinate officials and such instructions should clearly that in the event of any violation, appropriate disciplinary actions will be initiated against all such authorities, who all are responsible

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for granting additional incentive increments in favour of the Teachers or in collusion with them. It is represented before this Court that the subordinate officials sometimes by wrong interpretation of the Government orders or in collusion with the individual Teachers concerned are granting third incentive increments and subsequent increments in the promotional cadre, knowing the fact that the Teachers are not eligible. All such cases to be reviewed and appropriate actions are to be initiated against all the officials concerned including the Teachers, who misguided or misinterpreted the authorities and the Government orders.

28.This Court is of a considered opinion that the Government of Tamil Nadu then and there issued orders in respect of various cadres like Secondary Grade Teacher/B.T.Assistant, P.G.Assistant/Higher Secondary School Headmaster, which created lot of confusions and paved way to the authorities and the Teachers to claim additional incentive increments over and above their entitlement, which was categorically stated in Government orders, while elaborating the terms and conditions. The Government also in some orders, clarified that a Teacher is entitled to get two incentive increments for acquisition of higher educational qualifications in his entire service. However, the very condition has not been followed in all respects by some competent authorities and on some occasions, such incentive increments over and above, the entitlement had been granted to some Teachers. However, this Court cannot follow the same as a "Precedent". Such erroneous grant of excessive incentive increments cannot be considered as a "Precedent", so as to grant the same relief to all Teachers, who all are subsequently approached the Court by way of writ petition. Even if, the Courts on factual circumstances granted such an additional increment, the same also denuded to loose its character as a legal precedent and each case has to be decided based on the facts and circumstances and more specifically, when the Government has produced all the Government orders and established that a Teacher is entitled to get two incentive increments in his entire career, then the Court cannot blatantly accept the earlier orders and grant the relief in excessive, so as to cause unlawful monetary loss to the State Exchequer. Thus, citing of certain other cases by the petitioner, cannot of any avail to get the relief from the hands of this Court. Whenever a "Precedent" is cited in respect of grant of such concessional scheme,

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the Court is bound to consider the terms and conditions of the scheme in its entirety. Some orders are obtained either from the Government or from the Courts by suppressing the Government orders, which states that a Teacher is entitled for two incentive increments in his entire service. Therefore, such orders implemented by the Government can never be construed as a "Precedent", so as to continue the errors perpetually even by the Courts. Courts on such occasions, must be cautious and the pleadings and suppressions in this regard is to be viewed seriously. A person, who is approaching the Court must enclose all the Government orders in the subject. In the absence of any such appropriate pleadings and enclosures of Government orders, the Government would not be in a position to grant relief as such sought for in the writ petition for grant of additional incentive increment over and above the condition prescribed in the scheme itself.

29.The learned counsel for the writ petitioner cited a judgment of this Court passed in W.A.No.2307/1999 dated 25.02.2004, wherein the Hon'ble Division Bench held as follows:

> *"6.Similarly after the said G.O., dated 09.12.1993, similar question came up for consideration before this Court in W.P.No.20437 of 1993. This Court by order dated 2.3.1994 has upheld the payment of 3rd set of two advance increments to the P.G.Assistants. Likewise, entitlement of P.G.Teachers for 3rd set of two advance increments also came up for consideration before this Court in W.P.No.8078/1994 and this Court by order dated 1.2.1995 has upheld the said order. For the above reasons, we find that the appellant is entitled to the benefit of G.O.Ms.No.747, Finance Department dated 18.8.1986 together with G.O.Ms.No.1023, Education, Science and Technology Department dated 09.12.1993. Hence, we see no merit in the order of the 2nd respondent dated 29.11.1989 in withdrawing the 3rd set of two advance increments given to the petitioner. Accordingly, the writ appeal is allowed and the impugned proceedings dated 29.11.1989 and the order of the learned Single Judge are set aside. No costs."*

30.The similar order was followed subsequently by the Courts. Another Hon'ble Division Bench order dated 15.07.2015 in W.A.(MD).Nos.701 and 769 of 2015 also was referred by the learned counsel for the

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petitioner. The learned counsel for the petitioner referred paragraph 26 of the judgment, which reads as under:

> *"26.This Court had taken up the above said writ petition along with the batch of writ petitions and after hearing both sides, this Court had rendered a finding saying that the incentive increments sanctioned in the previous position i.e., in the cadre of Secondary Grade Teacher or B.T.Assistant could not be taken into account, because P.G.Assistant is separate cadre and in that Cadre, the teachers are entitled for incentive increment pursuant to the G.O.Ms.No.1170, dated 20.12.1993."*

31.However, this Court would able to find out in the very same judgment that para 20, which reads as follows:

> *"20.The G.O.Ms.No.1024, Education, Science & Technology Department, dated 09.12.1993 has also been passed in similar circumstances, as narrated in G.O.Ms.No.1023 and clause 3, caused necessary amendment to the G.O.Ms.No.42, Education, dated 10.01.1969. As per Clause(ii), the maximum number of advance increments, which a teacher, can get under the scheme of incentive increments under this Government order shall be four in his entire service."*

32.The Hon'ble Division Bench has taken note of the fact that as per Clause 2 of G.O.Ms.No.1024, "the maximum number of advance increments which a Teacher can get under the scheme of incentive increments under this Government Order shall be four in his entire service." When the Hon'ble Division Bench has taken note of the fact that under the scheme, the incentive increment to be granted and the total number of incentive increment is two. There is no confusion in respect of grant of any further incentive increment to the Teacher on promotion or on transfer to another cadre. Thus, it is clarified even by the Hon'ble Division Bench that a maximum number of advance increments which a Teacher can get under the scheme is two incentive increments amounting to four increments in his entire service. Therefore, on promotion, a Teacher would not be entitled to get third incentive increment and which will amount to an anomaly and the same would create discrimination amongst the class of people, who are working under the same Department. If such incentive increments granted as a special scheme is extended beyond its scope, then the same will

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create lot of confusions and every Teacher will claim that the third incentive increment in each cadre and it will be an unguided one, resulting in great monetary loss to the State Ex-Chequer. The special scheme introduced in this regard is to be followed scrupulously in its terms and conditions and there cannot be any deviation in respect of following the scheme.

33.The excess claim of incentive increments are frequently made by the Teachers working in the Education Department, on account of number of Government orders passed in peace meal in respect of each cadre in the teaching line. The respondents ought to have issued a consolidated instructions, enabling the subordinate authorities to implement the special concessional scheme in its letter and spirit and to fulfill its objectives. Unfortunately, such an exercise has not been done so far by the Government for the past many years and even after witnessing that large number of excessive claims are made by the Teachers periodically and the State suffers financial loss without any justification. Hundreds of writ petitions are filed and in some writ petitions even by obtaining orders to consider the representation, the authorities had granted excessive incentive increments to the Teachers and those implementation, orders are cited as a "Precedent", enabling these Teachers to get excessive incentive increment over and above the terms and conditions of the scheme itself. Thus, such a situation ought to have been averted by the competent authorities. Thus, this Court is of an opinion that such orders passed by the Government granting third incentive increment to few Teachers can never be followed as a "Precedent" and certainly those orders are denuded to loose its status as legal Precedent. Thus, those orders cannot be followed hereafter for the purpose of grant of third incentive increment to the Teachers in the promotional cadre. This apart, certain orders of the Courts, which all are passed based on the particular facts and circumstances, also cannot be followed as a Precedent, so as to continue the relief in all cases without taking note of the Government orders, terms and conditions stipulated therein for the purpose of grant of incentive increments to the Teachers in their services.

34.The Hon'ble Division Bench order cited by the learned counsel for the petitioner dated 15.07.2015 passed in Writ Appeal(MD).No.701 of 2015, the Court has taken note of the Government orders passed in

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G.O.Ms.No.1024, which categorically enumerates that the maximum number of advance increments, which a Teacher can get under the scheme is two incentive increments amounting to four increments. Thus, there is no question of grant of third incentive increment to a Teacher in the promotional cadre and the Teacher is certainly entitled to get two sets of incentive increments in his entire career.

35.Recently, the Hon'ble Division Bench considered the very same issue in respect of grant of incentive increment to the cadre of B.T.Assistant in Writ Appeal No.1664/2016 dated 29.06.2018. The Division Bench observed as follows:

> *"5. Mr.K.Karthikeyan, learned Government Advocate would contend that in view of G.O.Ms.No.1024 dated 09.12.1993, which restricts the maximum number of incentive increments to two and in view of the fact that the respondent had already been granted two incentive increments, which is equivalent to four advance increments, the respondent will not be entitled any further incentive increment during the period of his service. A copy of the said G.O. dated 09.12.1993 has been produced before us, the relevant portion of the G.O. reads as follows:*
>
> *"The maximum number of advance increments which a Teacher can get under the Scheme of incentive increments under this Government Order shall be four in his entire service".*
>
> ***(one incentive increment is equivalent to two advance increments).***
>
> *The said position was clarified by the Government in G.O.Ms.285, School Education Department dated 28.11.2007, which reads as follows: "As per the policy decision of the Government, two incentives (four increments) only may be granted to the teachers for the entire period of their service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed. qualification during his service as Post Graduate Teachers and promoted to the Headmaster Post and after the promotion as Headmasters, on acquiring M.Phil/Ph.D/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O. is ordered."*

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6. Of course, the respondent in his affidavit filed in support of Writ Petition has referred to certain Government Orders as well as the Orders of this Court granting a third set of incentive increments to certain teachers. The said Government Orders have also been produced before us by the learned Government Advocate, those Government orders have been passed in particular cases, considering the peculiar circumstances of the case and the fact that the higher qualification in those cases are obtained, before 09.12.1993, i.e. the date on which the first G.O. i.e. G.O.Ms.No.1023 was passed restricting the number of incentive increments to a maximum of two, during the service of the teacher. Therefore, we do not think that those Government Orders which have been passed taking note of certain special circumstances could be taken as precedents to enable the respondent to claim an incentive increment, which he would not be entitled to otherwise.

7. The policy decision of the Government has been consistent to the effect that the teachers who acquire higher qualifications can be granted two incentive increments equivalent to four advance increments, during the entire tenure of their service. There is no dispute regarding the fact that the respondent has been awarded two incentive increments for acquiring B.Ed. and M.A. qualifications. Therefore, he cannot, as a matter of right, claim the third set of incentive increments for having obtained M.Phil qualification. We are therefore, unable to sustain the order of the learned Single Judge directing payment of third incentive increment to the respondent.

8. For the foregoing reasons, the Writ Appeal is allowed and the Writ Petition No.22860 of 2014 will stand dismissed. However in the circumstances without costs. Consequently, the connected miscellaneous petitions are closed."

36.The appeal filed by the Department has been allowed and the Hon'ble Division Bench directed that a Teacher is entitled for two incentive increments alone and the Government order also clarifies the same. Thus, the third incentive increment is impermissible as per the terms and conditions of the scheme itself.

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37.Under these circumstances, a promotion granted to a Teacher will not confer any further legal right

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to claim third incentive increment on acquisition of higher educational qualification. Every Teacher in his entire service is entitled to get two incentive increments for acquiring higher qualification in their service and the Degrees, which all are eligible and other criterias as fixed in the Government orders and the Government has to follow scrupulously in respect of grant of incentive increment for all the Teachers without any discrimination.

38.This being the principles to be followed, this Court is of an opinion that all the Teachers, irrespective of their cadre are entitled to get two incentive increments in their entire service. Accordingly, the 1st respondent/Secretary to Government, School Education Department is directed to issue a consolidated instructions in respect of grant of incentive increments to all the cadres, enabling the competent authorities to implement the scheme in its letter and spirit and without any violation or deviation. Such a consolidated instructions are to be issued by the Secretary to Government, School Education Department, within a period of four weeks from the date of receipt of a copy of this order.''

7. In the event of not granting increments to the writ petitioner, the same shall be considered based on the Government orders and in the light of the observations made in the judgments (cited supra). In all and other respects, the relief as such sought for to grant incentive increments cannot be considered.

8.Accordingly, this writ petition stand disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed."

5. The writ petitioners state that the respondents have not even granted one incentive increment to them, though they are eligible as per the Government Orders in force. The writ petitioners further state that they have acquired higher qualification and therefore, they are entitled for incentive increment.

6. In view of the legal principles settled in the case cited supra, this Court is of the considered opinion that the case of the writ petitioners is also to be considered with reference to the Government Orders as well as the Rules in force. This being the factum, the respondents are directed to consider the case of the writ petitioners for grant of incentive increment strictly

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with reference to the Government Orders in force and after verifying the nature of qualifications acquired by them, grant incentive increment, if the writ petitioners are otherwise eligible.

7. With these observations, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To:
1.The District Elementary Educational Officer,
Madurai.

2.The Assistant Elementary Educational Officer,
Madurai South, Madurai.

+4 CC to M/s.R.SUBRAMANIAN, Advocate (SR-72792[F] dated 02/07/2019)

KRK

W.P.(MD) Nos.4995, 4996, 4997 & 4998 of 2015
and
M.P.(MD) Nos.1 & 2 of 2015
(in all W.Ps.)
28.06.2019

KM/(11.07.2019) 23P 7C

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