



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) Nos.18714 and 18727 of 2020

and

W.M.P. (MD) Nos.15638, 15641, 15647 and 15649 of 2020

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T.Thillaiammal ... Petitioner in W.P.(MD)No.18714 of 2020

T.Rajasulochana ... Petitioner in W.P.(MD)No.18727 of 2020

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

3.The District Educational Officer,
Sivakasi Educational District,
Sivakasi,
Virudhunagar District.

4.The Secretary,
Sivasubramania Nadar - Guruvammal Girls
Higher Secondary School,
Thiruthangal,
Virudhunagar District.

... Respondents in W.Ps.

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent vide Na.Ka.No.1550/A4/2019, dated 17.06.2019 and the impugned order passed by the 3rd respondent vide O.Mu.No.1974/A4/2018 and O.Mu.No.1978/A4/2018 dated 28.09.2020, respectively, and quash the same and consequently direct the 4th respondent to forward the proposal in respect of petitioners' incentive increment for having acquired B.Ed., and M.A., Degrees and M.Sc., respectively, to the 2nd and 3rd respondents and direct the 2nd and 3rd respondents to approve the same within the time frame.



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W.P. (MD) Nos.18714 and 18727 of 2020

For Petitioner : Mr.N.D.Shanmugaraja Sethupathi
in both WPs

For Respondents : Mr.N.Shanmuga Selvam,
Addl. Govt. Pleader for R1 to R3
in WP (MD) No.18714/2020

: Mr.A.Thiagarajan, Government Advocate
for RR1 to 3 in WP (MD) No.18727/2020

COMMON ORDER

These writ petitions have been filed to quash the impugned order passed by the 2nd respondent vide Na.Ka.No.1550/A4/2019, dated 17.06.2019 and the impugned order passed by the 3rd respondent vide O.Mu.No.1974/A4/2018 and O.Mu.No.1978/A4/2018 dated 28.09.2020, by stating that the petitioners have not obtained prior permission for pursuing their studies B.Ed., and M.A., Degrees and M.Sc., Degree respectively and to direct the 2nd and 3rd respondents to approve the same.

2.The main grievance of the petitioners is that they have completed B.Ed., and M.A. and M.Sc., degrees respectively and hence, they are entitled to get incentive increment. However, the same was denied to the petitioners stating that prior permission was not obtained for studying B.Ed., and M.A. and M.Sc., degrees respectively.

3. The learned counsel appearing for the petitioners submitted that prior permission for studying any degree is not required and it will not be a bar for granting incentive increment. In this regard, the learned counsel for the petitioners has referred to the order of this Court in W.P.(MD).No.14085 of 2015, dated 26.11.2020, wherein the learned single Judge has followed the judgment of the Division Bench of this Court reported in **(2015) 6 MLJ 315 (Director of Elementary Education, Chennai vs. G.Vijayalakshmi and another)** and submitted that as per the law laid down by this Court, there is no requirement to get prior permission for undergoing higher studies.

4. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that as per the G.O.(Ms.).No.944, Education (D2) Department, dated 29.07.1989, the petitioners have to get prior permission for undergoing higher studies. In reply, the learned counsel appearing for the petitioners submitted that the said G.O. has been set aside by this Court holding that the G.O., cannot override the Act. Therefore, the G.O., is not applicable to the facts of the present case.



5. On perusal of the said judgment, it appears that there is no need to get any prior permission for undergoing higher studies. Paragraph Nos. 12 and 13 of the said judgment is as follows:

"12. In the judgment reported in **(2015) 6 MLJ 315, Director of Elementary Education, Chennai, vs. G. Vijayalakshmi and another**, relied on by the petitioner, the Division Bench of this Court held as follows:-

"35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion or substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamil Nadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued



applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of repetition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973.''

13.The above judgment is squarely applicable to the present facts and circumstances of the case. Merely because the petitioner has not obtained prior permission from the Director of School Education for joining the correspondence course, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner is entitled to incentive increment."

6. The present issue is squarely covered by the above judgment and the issue is no more *res integra*. Therefore, the Writ Petitions are allowed and the impugned orders passed by the third respondent and second respondent dated 28.09.2020 and 17.06.2019, respectively, are quashed. Consequently, the fourth respondent is directed to forward a proposal in respect of the petitioners' incentive increment to the third respondent within a period of four weeks from the date of receipt of a copy of this order and the third respondent is directed to sanction the incentive increment to the petitioners for acquiring B.Ed., and M.A. and M.Sc., degrees respectively with effect from the date on which the degree is completed, within a period of eight weeks thereafter. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To:-

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
- 3.The District Educational Officer,
Sivakasi Educational District,
Sivakasi,
Virudhunagar District.
- 4.The Secretary,
Sivasubramania Nadar - Guruvammal Girls
Higher Secondary School,
Thiruthangal,
Virudhunagar District.

+1 cc to Mr.D.Shanmugaraja Sethupathi, Advocate SR.No.26336

+1 cc to The Special Government Pleader Sr.No.26732