



WEB COPY

W.P.(MD)No.25828 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.02.2020

PRONOUNCED ON : 28 .02.2020

CORAM:

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

W.P.(MD)No.25828 of 2019

and

W.M.P.(MD)No.22341 of 2019

K.Pechiammal

... Petitioner

Vs.

1.The Government of Tamilnadu,
represented by its Secretary to Government,
(School Education and Elementary Education Department),
Fort St.George,
Chennai 600 009.

2.The District Educational Officer,
Srivilliputhur,
Virudhunagar District.

3.The Block Educational Officer,
Srivilliputhur,
Virudhunagar District.

4.The Secretary,
Thiyagaraja Primary School,
Srivilliputhur,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating of G.O.Ms.No.83 School Education (Elementary Education 1(2) Department dated 28-04-2017 of the first respondent herein in so far as the clause refusing to give monetary benefits from the date of passing higher qualification and refusing to extend the benefits to those appointments made after 1997 to 2000 and the consequential impugned proceedings in Na.Ka.No.91/A1/2019 dated 17-07-2019 of the third respondent herein and quash the same and consequently direct the respondents 1 to 3 herein to award incentive increments to the petitioner for her M.A degree with effect from May 2012 respectively with all attendant benefits and privileges based on the judgement reported in 2008 (5) MLJ 1349.

For Petitioner : Mr.T.Pon Ramkumar

For R1 to R3 : Mr.A.Thiyagarajan

Government Advocate

**ORDER**

This Writ Petition is filed to quash the order dated 17.07.2019 passed in Na.Ka.No.91/A1/2019 by the third respondent and to direct the respondents 1 to 3 to award incentive increments to the petitioner for her M.A degree with effect from May 2012 with all attendant benefits and privileges. The Government in G.O.Ms.No.83, School Education (Elementary Education 1(2) Department, dated 28-04-2017 [hereinafter referred to as 'said GO' for the sake of brevity] had provided for incentive increment to the SC/ST graduate Teachers appointed in the Secondary post between 1997 to 2000 for their additional qualifications notionally, either from the date of appointment or date of passing of the higher qualification with monetary effect from the date of issuance of the said GO.

2.The respondents herein have taken a stand that the appointment of the petitioner itself is to the effect that the petitioner will not claim any incentive increment. The issue as to whether such stand taken by the respondents has already been considered by the two Division Bench of this Court. In the case of **R.Premkumari Vs. State of Tamilnadu, represented by its Secretary to Government and others** reported in **CDJ 2008 MHC 3188**, the Division Bench of this Court was of the view that a person, who enters into service after having acquired qualification, would be entitled to get the incentive increment and any other view, contrary to the same would be opposed to the right of equality as enshrined in Articles 14 and 16 of the Constitution of India. The relevant paragraphs of the order read as follows:

'7. The learned single Judge has observed "Incentive increments are granted only for persons acquiring higher qualifications while in service but not to a person, who possesses a higher qualification even before entering into service".

8. We do not think the aforesaid observation of the learned single Judge can stand the scrutiny of logic or even reality. The obvious intention in granting an incentive increment is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification, even though in service, so that the quality of service would improve. This is obviously on the assumption that a higher qualified person could work more efficiently. Therefore, it defies logic as to why a person who had already qualified would not get an incentive increment, if such an incentive increment is given to a lower qualified person in service, who acquires subsequently such higher qualification. Such a differential treatment would not stand the scrutiny of right to

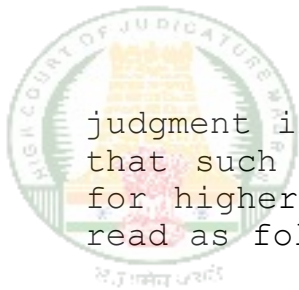


equality as enshrined in Articles 14 and 16 of the Constitution.

9. That apart, if the relevant G.Os are examined carefully, it can be safely concluded that the G.Os in reality do not intend to lay down in the manner it has been now concluded by the learned single Judge. We have already extracted the relevant portions of the G.Os. The underlined portion of G.O.Ms.No.42 dated 10.1.1969 indicates that if a person possessing higher qualification enters into service, his initial pay may be fixed by giving advance increments. Similarly in the subsequent G.O.Ms.No.747, dated 18.8.1986, paragraph 2 makes it clear that "the P.G. teachers and Headmasters of Higher Secondary Schools who possess or acquire Post Graduate qualification in education i.e. M.Ed., Degree shall be granted two advance increments in the scales of pay admissible to them". It is nowhere contemplated in the G.Os., that the incentive increments would be given only to those who acquired subsequently the qualification, but it would be given to all those who either possess, which means the degree is obtained at the time of entering into service or acquire, which means the degree is obtained after entering into service. Even the subsequent G.Os or the clarifications, nowhere indicate that in order to be eligible for getting incentive increment, the person has to acquire such higher qualification only after entering into service and not otherwise. Therefore, we are unable to accept the conclusion of the learned single Judge that a person who enters into service after having acquired a higher qualification, is not entitled to get incentive increments.

10. Since the impugned order was passed on the basis that the appellant was not entitled to receive incentive increments having entered into service with higher qualification is now disapproved by us, the authorities are required to consider the matter afresh in the light of the conclusion already made to the effect that the appellant was entitled to receive such increments at the time of entry into service.'

3. Likewise, when the Educational Department had refused incentive increments to some teachers on the ground that they had given undertaking that they will not claim incentive increments, the said issue came up for consideration before the Hon'ble Division Bench of this Court in the case of **The Director of Elementary Education, Chennai and others Vs. The Correspondent, St. Joseph Middle School, Devakottai Extension, Sivagangai District and others**, wherein the Division Bench had relied upon another Division Bench



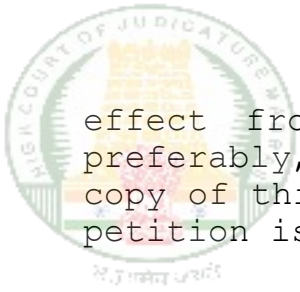
judgment in **W.A. (MD) No.511 of 2011** and had come to the conclusion that such teachers would be entitled to claim incentive increments for higher qualification. The relevant paragraphs of the judgment read as follows:

3.The reason for refusing the incentive increment is on ground that the writ petitioners when they were appointed had given an undertaking that they will not claim incentive increment when they acquire higher qualification.

4.Similar issue was considered by the Division Bench in the case of State of Tamil Nadu v. Louis in W.A. (MD)No.511 of 2011 dated 27.06.2011. After considering the objections raised by the Government, which is similar to objections raised in these appeals, the Court pointed out that the respondent therein, had acquired higher qualification M.Sc., and M.Ed., and acquiring higher education will not prevent the writ petitioners from claiming the incentive increment for higher qualification. Therefore, the order passed by the writ Court, granting relief to the teacher was affirmed and the appeal filed by the State was dismissed. The State preferred a special leave petition before the Hon'ble Supreme Court in Slp.C.C.No.13056 of 2014, which was dismissed by an order dated 25.08.2014. It is seen that the judgment rendered by the Division Bench has been implemented by the Government in G.O.Ms.No.(3d) No.13 School Education Department, dated 06.02.2015. The writ Court, took into consideration, the decision of the Division Bench in the case of Premkumari v. State of Tamil Nadu (2008 (5) MLJ 1349), while granting relief to the writ petitioners.'

4.The issue involved in the present writ petition is squarely covered in the aforesaid Division Bench orders and as such, the stand taken by the respondents in refusing to grant incentive increment to the petitioner for possessing higher educational qualification cannot be justified.

5.In view of the aforesaid settled propositions, the respondents may not be justified in placing reliance on the said GO, when the law on this aspect has been laid down much earlier in the aforesaid decisions. While that being so, the petitioner would be entitled for the incentive increments, without reference to the aforesaid GO. In the light of the above observations, the impugned order dated 17.07.2019 passed in Na.Ka.No.91/A1/2019 by the third respondent is hereby quashed and the Writ Petition stands allowed. Consequently, the first respondent herein is directed to award incentive increments to the petitioner for her M.A degree with



effect from May 2012 respectively with all attendant benefits, preferably, within eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

mm/sm

To

1.The Secretary to Government,
(School Education and Elementary Education Department),
Fort St.George,
Chennai 600 009.

2.The District Educational Officer,
Srivilliputhur,
Virudhunagar District.

3.The Block Educational Officer,
Srivilliputhur,
Virudhunagar District.

W.P. (MD)No.25828 of 2019

Dated:28.02.2020

SMA/15/06/2020/5P/4C