



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2020

CORAM:

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

**W.P. (MD) Nos.10841 and 13341 of 2017**

**and**

**W.M.P (MD) .Nos.8263 and 10399 of 2017**

W.P (MD) .No.13341 of 2017

R.Muthunesam

... Petitioner

Vs.

1.The District Elementary Educational Officer,  
Madurai.

2.The Additional Assistant Elementary  
Educational Officer,  
T.Vadipatti, Madurai District.

3.G.Manimegalai

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.404/A1/2017 dated 03.07.2017 and quash the same and consequently, directing the second respondent to grant and restore the incentive for the B.Ed., qualification of the petitioner.

For Petitioner : Mr.R.Satish

For Respondents : Mr.A.Thiyagarajan  
Government Advocate (for R1 & R2)

No appearance (for R3)

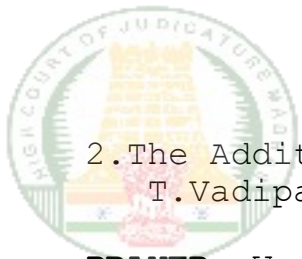
W.P (MD) .No.10841 of 2017

R.Muthunesam

... Petitioner

Vs.

1.The District Elementary Educational Officer,  
Madurai.



2.The Additional Assistant Educational Officer,  
T.Vadipatti, Madurai District.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order passed by the second respondent vide Na.Ka.No.404/A1/2017 dated 08.05.2017 and to quash the same as illegal, improper, unconstitutional, unlawful and arbitrary and consequently, direct the second respondent to grant the ordinary annual increments to the petitioner which should have been granted on 01.10.2015 and 01.10.2016 and selection grade.

For Petitioner : Mr.R.Satish

For Respondents : Mr.A.Thiyagarajan  
Government Advocate

**COMMON ORDER**

The petitioner herein had originally joined the Panchayat Union Primary School, Varusanadu, as a Secondary Grade Teacher and was subsequently, promoted as Headmistress in Thamodharanpatti Primary School on 18.06.2001. In view of her qualification in B.A (Tamil Literature), she was promoted as Tamil Pandit Headmistress in Panchayat Union Middle School on 27.11.2006. In the month of May 2011, the petitioner completed his B.Ed degree and M.A (Tamil) degree in the year 2013. In view of these two higher qualifications, she was granted two incentives. The incentive for B.Ed degree was sanctioned on 27.09.2013. By an order dated 14.03.2014, the second respondent herein had cancelled the petitioner's B.Ed., incentive and had ordered for recovery on the ground that the Teachers, who were promoted as Headmasters of Middle School, after working as Tamil Teachers, are alone entitled for getting incentive for B.Ed., course and since the petitioner herein was promoted as Tamil Pandit Headmistress from the post of Primary School Headmistress, she was not entitled to. Challenging the said order, a writ petition in W.P(MD).No.5426 of 2014 was filed, in which, this Court had granted an order of interim stay of the cancellation order dated 14.03.2014. Pending the said writ petition, the second respondent had recalled the earlier order of cancellation dated 14.03.2014 through the proceedings dated 15.04.2014 and thereby, cancelled the earlier order. In view of such cancellation, the petitioner was constrained to withdraw the writ petition in W.P(MD).No.5426 of 2014 on 09.06.2014.

2.After such withdrawal, the second respondent had once again passed an order on 13.11.2015 cancelling the incentive granted to the petitioner for her B.Ed., degree on the same grounds. This had



prompted the petitioner to file a second writ petition in W.P(MD). No.21807 of 2015, in which, an order of interim stay was again granted on 07.12.2015. Once again, the second respondent had withdrawn the earlier order dated 15.04.2014 and thereby the incentive increment for B.Ed., degree was restored to the petitioner. In view of the recall of the second respondent's order cancelling the incentives, the petitioner had once again withdrawn the second writ petition in W.P(MD).No.21807 of 2015, since the prayer sought for therein may have become infructuous. Pursuant to the same, the petitioner had received his incentive for B.Ed., qualification.

3.In this background, the present impugned order has been passed for the third time by the second respondent herein on 03.07.2017, cancelling the incentive for B.Ed., degree, on the very same grounds on which it was earlier cancelled. The said order dated 03.07.2017 is put under challenge in the present writ petition.

4.The reason assigned in the present impugned order is that the Headmasters are not eligible for incentive for B.Ed., acquired after being promoted as Middle School Headmaster. A reference has also been made to the earlier writ petition filed by the petitioner, which has been subsequently withdrawn by him.

5.The learned counsel for the petitioner would submit that there is no impediment on the part of the respondents to award incentive for B.Ed., degree to such Headmasters, who have acquired the degree after promotion as Middle School Headmaster.

6.The learned counsel for the respondents would place reliance on the averments made in the counter affidavit and submit that the clarification issued by the Deputy Director of Elementary Education dated 07.12.2019 debarred the petitioner from getting incentives and in view of the audit objections, they were constrained to seek for recovery of the incentive already granted.

7.When identically placed Headmaster had sought for information under the Right To Information Act with the respondents as to whether the Headmasters, who had acquired B.Ed., degree after promotion, are entitled for incentive increment for B.Ed., degree, the respondents had placed reliance on G.O.Ms.No.107, dated 20.01.1976 and stated that such Middle School Headmaster are eligible for incentive for B.Ed., degree acquired by them, even after being promoted as Middle School Headmasters. A copy of the



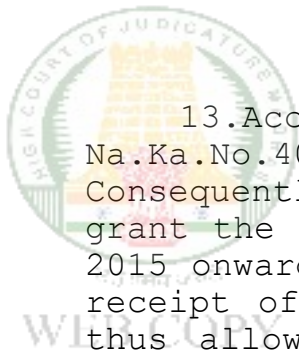
8. When the Government Order itself provides for incentive increment for B.Ed., degree acquired by the Headmasters after their promotion as Middle School Headmasters, a clarification of the Deputy Director of Primary Education cannot hold otherwise, than what has been held in the Government Order. As a matter of fact, even the respondents herein had in two earlier occasions felt that the petitioner was entitled to receive such incentive increment and thereby, had recalled their own order cancelling the incentive already granted. It is rather unfortunate that on two occasions, the petitioner herein was constrained to approach this Court challenging the cancellation of the increment awarded and on both the occasions, though the respondents had chosen to recall their own cancellation orders, now for the third time have resorted to the same conduct of cancelling the incentive already granted.

9. In my view, the respondents' aforesaid conduct would amount to an abuse of the process of law. In view of the categorical statement made by the authorities with regard to the entitlement of the petitioner to receive the incentive increment for B.Ed., degree, I do not find any justification on the part of the respondents, in issuing the present impugned order.

10. In the result, the impugned order dated 03.07.2017 in Na.Ka.No.404/A1/2017 passed by the second respondent stands quashed. Consequently, the second respondent is directed to restore the incentive increment extended to the petitioner for having acquired B.Ed., qualification from the date on which, the same came to be denied. Such process shall be completed, atleast within a period of four weeks from the date of receipt of a copy of this order.

11. In view of the above observations, W.P(MD).No.13341 of 2017 stands allowed.

12. Insofar as the grievance of the petitioner in W.P(MD).No.10841 of 2017 is concerned, the annual increment for the year 2015-2016 were denied by the respondents on the ground that the petitioner herein had been wrongly extended with incentive increment for possessing the higher qualification of B.Ed., degree. Now, since this Court has held that the petitioner would be entitled for the incentive increment for possessing the higher qualification of B.Ed., degree, there cannot be any impediment on the part of the respondents to extend the annual increment, including the revised increment from the year 2015 onwards. Apart from the grant of incentive increment for B.Ed., degree, no other reason has been assigned for denial of the annual increment to the petitioner.



13. Accordingly, the impugned order dated 08.05.2017 in Na.Ka.No.404/A1/2017 passed by the second respondent stands quashed. Consequently, there shall be a direction to the second respondent to grant the ordinary annual increment to the petitioner from the year 2015 onwards atleast within a period of four weeks from the date of receipt of a copy of this order. W.P(MD).No.10841 of 2017 stands thus allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

rmk  
To

- 1.The District Elementary Educational Officer,  
Madurai.
- 2.The Additional Assistant Educational Officer,  
T.Vadipatti, Madurai District.
- 3.The Additional Assistant Elementary  
Educational Officer,  
T.Vadipatti, Madurai District.

+1cc to Mr.G.R.Sathish,Advocate, SR.No.3781

+1cc to Spl.Govt.Pleader, SR.No.3917

**W.P. (MD) Nos.10841 and 13341 of 2017**  
**29.01.2020**

JMN(03.03.2020) 5P : 6C