

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.20516 of 2016

and

WMP.No.17600 of 2016

P.Anandhan

... Petitioner

Vs

- 1.The Director,
Directorate of School Education,
College Road,
Nungambakkam, Chennai.
- 2.The Joint Director,
Directorate of School Education,
College Road,
Nungambakkam, Chennai.
- 3.The Joint Director (Staff)
Directorate of School Education,
College Road, Nungambakkam, Chennai.
- 4.The Chief Educational Officer,
O/o. the Chief Educational Office,
Sathuvachari, Vellore District,
Vellore.
- 5.The Head Master,
Government High School,
Kathiyavadi, Walajah Taluk,
Vellore District, Vellore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling the file Na.Ka.No. 55/2016 dated 13/06/2016 from the file of 5th respondent and quash the same and forbearing the 5th respondent from withholding payment of incentive to the petitioner.

For Petitioner : Mrs.R.T.Sundari
for Mr.R.Margabandhu
For Respondents : Mr.P.Raja, GA

ORDER

The relief sought for in this writ petition is to issue a writ of Certiorarified Mandamus, to call for the records

relating to the proceedings in Na.Ka.No.55/2016 dated 13/06/2016 on the file of the fifth respondent and quash the same and consequently, forbearing the fifth respondent from withholding payment of incentive to the petitioner.

2. According to the petitioner, he was appointed as a Secondary Grade Teacher on 07.08.1995 in Government High School, Nagamangalam, Dharmapuri District. Subsequently, he was transferred and posted as Secondary Grade Teacher in North Arcot District, Kathivadi High School in 1996 in the same scale of pay. Thereafter, he got promotion to the post of BT Assistant (Tamil) on 02.08.2010. It is the further case of the petitioner that after getting permission from the department, he acquired M.Com. degree in the year 1996 and B.Ed. degree in the year 2013. Having possessed these qualifications, the petitioner is entitled for two increments for each degree and the same were accordingly, granted to him on 14.12.2013. However, by order dated 23.11.2015, the 2nd respondent stopped the increment granted towards possession of M.Com degree, consequent to which, the 5th respondent passed an order dated 13.06.2016 directing the petitioner to refund the excess incentive of Rs.79,629/-, which is impugned herein.

3. On 17.06.2016, at the time of admission, this Court granted an order of interim stay in respect of recovery of the excess payment made from the salary of the petitioner.

4. Today, when the matter was taken up for consideration, the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents jointly submitted that the issue involved herein is covered by the judgment of a Division Bench of this Court dated 29.06.2018 rendered in Writ Appeal No.1664 of 2016, the relevant passage of which is extracted hereunder:

"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. read 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".

6.Of course, the respondent in his affidavit filed in support of the 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".

5. Having regard to the above, now, it is made clear that the Teachers including the petitioner, who acquired higher qualifications, can be granted with two incentive increments equivalent to four advance increments, during the entire tenure of service. Thus, the respondents are bound to follow the Government Order referred to in the Judgment as well as the above said decision of the Division Bench, for the purpose of grant of the incentive increments to all the teachers, including the petitioner.

6. It is the specific case of the petitioner that originally, he was granted two incentive increments for having acquired the degrees of M.Com and B.Ed. and by the order impugned herein, he was denied one incentive increment granted for M.Com degree. This Court is of the opinion that as per the Government order and the decision of the Division Bench (cited supra), the petitioner is entitled for two incentive increments, during his entire service. If he was granted more than two incentive increments, it is left open to the respondent authorities to recover the same in accordance with law.

7. With the above observation, this writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Director,
Directorate of School Education,
College Road,
Nungambakkam, Chennai.

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Vellore District, Vellore.

+1cc to Mr.R.Margabandhu, Advocate, S.R.No. 11186

W.P.No.20516 of 2016

RGN(CO)
GN(02/07/2021)

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