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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2021

PRONOUNCED ON : 06.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.17472 of 2021
and WMP.No.18551 of 2021
(Through Video Conferencing)

M.P.Ravindranath

... Petitioner

Vs

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

2.The Chief Educational Officer,
Chengalpattu District,
Chengalpattu.

3.The District Educational Officer,
St.Thomas Mount Education District,
Chrompet,
Chennai - 600 044.

4.The Correspondent,
Aringnar Anna Cantonment High School,
Pallavaram,
Chennai - 600 043.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.2152/A5/2021 dated 30.07.2021 and to quash the same and consequently directing the respondents to pass orders sanctioning incentive increment for acquiring M.Phil., degree by the petitioner as per G.O.Ms.No.177 School Education Department dated 13.10.2016, with all consequential and other attendant benefits including arrears of salary and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.



For Petitioner : Mr.G.Sankaran

For R1 to R3 : Mr.L.S.M.Hasan Fizal
Government Advocate

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ORDER

In this writ petition, the petitioner has challenged the impugned proceedings in Na.Ka.No.2152/A5/2021 dated 30.07.2021 of the 2nd respondent and for a consequential direction to the respondents to sanction incentive increments for acquiring higher qualification as per G.O.Ms.No.177 School Education Department dated 13.10.2016 with all consequential and other benefits.

2. By the impugned order, the second respondent has denied incentive increments payable to the petitioner which according to the petitioner is available in terms of G.O.Ms.No.177 School Education Department dated 13.10.2016 which has been denied on the ground that:

(i) the petitioner had not obtain permission from the school management for acquiring Higher qualification.

(ii) for not getting appropriate permission from the Government before proceeding to acquire the Higher qualification.

(iii) In terms of G.O.Ms.No.37 Personnel and Administrative Reform dated 10.03.2020, the scheme of sanction of advance increment for acquiring qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole be cancelled/dispensed with immediate effect.

3. The learned counsel for the petitioner submits that this issue has been considered in several cases by this Court In this connection, attention is drawn to a decision rendered in W.P.(MD).No.18120 of 2020 on 10.12.2020 and a decision rendered in W.P.(MD).No.4076 of 2021 on 02.03.2021. The learned counsel for the petitioner further submits that the issue has been affirmed by the Madurai High Court vide order dated 16.04.2021 in W.A.(MD) No.813 of 2021.

4. The learned counsel for the respondents submit that though the petitioner was not required to obtain permission which has been held by the Court in the above said decision, yet the scheme has been withdrawn. He submits that the respondents are Governed by G.O.Ms.No.37 Department of Personnel and Administrative Reform dated 10.03.2020 on in cases where Government servants who have acquired higher qualification prior to issue of this general order and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative



department concerned and not with reference to the otherwise qualified, then the advances increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degree acquired.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent. I have perused the impugned order and relevant G.O. sanctioning incentive increments for acquiring higher qualification and also for G.O.Ms.No.37 dated 10.03.2020 which has been reproduced in the impugned order. The records also indicate that the petitioner was awarded with punishment of censure for acquiring higher incentive by the 3rd respondent dated 01.12.2018.

6. After imposing the aforesaid punishment, the 3rd respondent sent the proposal to the 2nd respondent for awarding incentive increments to the petitioner in December 2018. The aforesaid representation has culminated in the impugned order. The relevant portion of G.O.Ms.No.37 dated 10.03.2020, which reads as under:

1) As a policy decision, the scheme of sanction of advance increment for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole be cancelled / dispensed with immediate effect.

2) The cases of Government Servants who have acquired higher qualification prior to issue of this general order and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and not with reference to the otherwise qualified, then the advances increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degree acquired.

7. In this case, the petitioner has not obtained higher qualification but was imposed with the punishment Censure and denied the benefit of incentive increments as per G.O.Ms.No.177 School Education Department dated 13.10.2016 and G.O.Ms.No.37 Personnel and Administrative Department dated 10.03.2020. The question is to be answered whether the petitioner can be denied the benefit of incentive increments



in terms of para 2 of aforesaid G.O.Ms.No.37 Personnel and Administrative Department dated 10.03.2020 which has been extracted when the petitioner obtained the higher qualification, G.O.Ms.No.177 School Education Department dated 13.10.2016 was in force. The fourth respondent has forwarded a proposal to the 3rd respondent that the petitioner had obtained M.Phil., without permission for which the petitioner has been imposed with a punishment of censure and therefore the higher incentives may be granted by ratifying the higher qualification obtained by the petitioner.

8. The decision cited by the learned counsel for the petitioner has made it clear that incentive increment cannot be denied merely because no permission was obtained from the Department.

9. G.O.Ms.No.37 Personnel and Administrative Reform dated 10.03.2020 which has been cited in the impugned order, has done away with the scheme of advance increment payable to government servants for acquiring higher qualification. However, there is a saving of rights under the said Government Order.

10. Therefore, the rights of the petitioner has to be determined in terms of paragraph 2 to G.O.Ms.No.37 Personnel and Administrative Reform dated 10.03.2020. It saves the rights of Government Servants to receive advance increments who have acquired higher qualification prior to its issue.

11. Though, later part of paragraph 2 of the aforesaid G.O.Ms.No.37 Personnel and Administrative Reform dated 10.03.2020 lacks clarity, denial of such incentives cannot be justified for the rights which accrued prior to its issue. The case of the petitioner has to be therefore examined in the light of the Government Orders that were prevailing at the time when the petitioner became eligible for such advance/incentive increments.

12. Such rights has to be examined separately as per the previous orders issued, if any, by the Administrative Department concerned. As the decision cited have held that such incentives cannot be denied merely on the ground that higher qualification was obtained without permission, the benefit of rights acquired cannot be denied.

13. The subsequent decision to withdraw the incentive cannot be denied to the disadvantage of the petitioner, based on a reading of first part of paragraph 2 of G.O.Ms.No.37 Personnel and Administrative Reform daed 10.03.2020. Therefore, the impugned order passed by the 2nd respondent liable to be quashed. It is accordingly quashed. The respondents are therefore directed to sanction the incentive increments available to the petitioner within period of four weeks from the date of receipt of copy of this order. This



writ petition is allowed with consequential relief to the petitioner.

14. In the result, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

drl

To

- 1.The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
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Chengalpattu.
- 3.The District Educational Officer,
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Chrompet, Chennai - 600 044.
- 4.The Correspondent,
Aringnar Anna Cantonment High School,
Pallavaram, Chennai - 600 043.

+1cc to Mr.G.Sankaran, Advocate SR.No.44992

+1cc to Government Pleader SR.No.45570

W.P.No.17472 of 2021
and
WMP.No.18551 of 2021

LN(CO)
GMY(11/10/2021)