WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.03.2021
CORAM
THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P.(MD) No.3846 of 2021
and
W.M.P(MD) No.3070 of 2021

S.Giltus
Secondary Grade Teacher,
St.Mary's Boys Higher Secondary School,
Millerpuram -628008
Thoothukudi District. .. Petitioner

Vs.

1.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

2.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

3.The Correspondent,
St.Mary's Boys Higher Secondary School,
Millerpuram-628008,
Thoothukudi District. .. Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned proceeding issued by the second respondent DEO in O.Mu.No.8396/A2/14 dated 12.03.2015 and the consequential proceeding in O.Mu.No.6756/A5/16 dated 14.09.2017, quash the same in so far as refusing to sanction incentive increment to the petitioner alone and further direct the first respondent CEO and the second respondent DEO to sanction and disburse forthwith the incentive increment (two advance increments) for the B.Ed Degree admissible to the petitioner.

For Petitioner : Mr.A.Amala
For Respondents No 1&2 : Mr.N.Shanmugaselvam, Additional Government Pleader

O R D E R

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2.This writ petition has been filed to quash the impugned order issued by the second respondent DEO in O.Mu.No.8396/A2/14 dated 12.03.2015 and the consequential proceeding in O.Mu.No.6756/A5/16 dated 14.09.2017, quash the same in so far as refusing to sanction incentive increment to the petitioner alone and further direct the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

first respondent CEO and the second respondent DEO to sanction and disburse forthwith the incentive increment (two advance increments) for the B.Ed Degree admissible to the petitioner.

3.The main grievance of the petitioner is that he has completed B.Ed., degree and hence, he is entitled to get incentive increment. However, the same was denied to the petitioner stating that prior permission was not obtained for studying B.Ed., degree.

4.The learned counsel appearing for the petitioner 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 petitioner 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.

5.The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that as per the G.O.(Ms.).No.944, Education (D2) Department, dated 29.07.1989, the petitioner has to get prior permission for undergoing higher studies. In reply, the learned counsel appearing for the petitioner 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.

6. 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*

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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 of 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 Tamilnadu 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 any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Prvate Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in sor far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed 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. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made 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 reptition, 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 Recognised 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*. However, in the present case, the petitioner's request for incentive increment for having possessed higher qualification came to be rejected on 12.03.2015 and

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the petitioner has moved the present writ petition after a lapse of five years. Apparently, the aforesaid judgment in the case of ***Director of Elementary Education, Chennai, vs. G.Vijayalakshmi and another (supra)*** was not available on the date when the impugned rejection order was passed. Nevertheless, since this Court has already held that prior approval of the concerned authority for the purpose of pursuing higher education cannot deprive a Teacher for incentive increment, it would be desirable to direct the petitioner to approach the third respondent seeking for grant of incentive increment.

7.In the light of the above observations, the petitioner herein is granted liberty to approach the second respondent herein with a representation seeking for grant of incentive increment and on receipt of the same, the second respondent herein shall consider it, in the light of the observations made in this order and without reference to the impugned rejection orders dated 12.03.2015 and 14.09.2017 and pass appropriate orders, at least, within a period of six weeks from the date of receipt of a copy of the representation.

8.This Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Chief Educational Officer,
Thoothukudi,Thoothukudi District.

2.The District Educational Officer,
Thoothukudi,
Thoothukudi District.

+1 CC to M/s.A.AMALA, Advocate (SR-8079[F] dated 02/03/2021)

+1 CC to M/s.SPL GP (SR-8222[F] dated 02/03/2021)

W.P.(MD) No.3846 of 2021
01.03.2021

ES(CO)
KB(24.03.2021) 5P 5C

https://hcservices.ecourts.gov.in/hcservices/