



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.1166 of 2021

and C.M.P. (MD) No.4994 of 2021

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1.The Director of School Education,
Chennai - 600 006.

2.The Chief Educational Officer,
Chief Educational Office,
Collectorate Campus,
Karur.

... Appellants/Respondent Nos.1 & 2

Vs

Joy Selvakumari

... Respondent/Writ Petitioner

PRAYER: Appeal under Clause 15 of the Letters Patent, against the order dated 23.10.2019, passed in W.P(MD)No.4103 of 2013.

Prayer in WP(MD). 4103/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent by its proceedings in R.C.No.7021/A2/2011 dated 12.4.2012 and to quash the same and consequently directing the 2nd Respondent to pay incentive increments on the basis of Petitioners acquiring higher qualification in the field of Physical Education (M.Phil.) in light of G.O.Ms.No.1170 dated 20.12.1993, G.O.Ms.No.324 dated 25.4.1995 and G.O.Ms.No.194 dated 10.10.2006 and pass such further or other orders as this Honble Court.

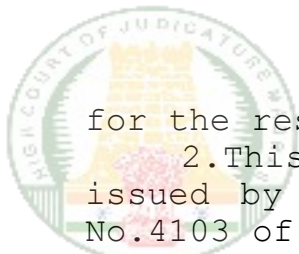
For Appellants : Mr.R.Baskaran,
Standing Counsel for Government

For Respondent : Ms.M.Padmavathi

COMMON JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM,J.**]

Heard Mr.R.Baskaran, learned Standing Counsel for Government, appearing for the appellants and Ms.M.Padmavathi, learned counsel



for the respondent.

2.This Writ Appeal is directed against the order and direction issued by the learned Single Judge dated 23.10.2019, in W.P.(MD) No.4103 of 2013. The said Writ Petition was filed by the respondent, seeking to quash the order passed by the second appellant dated 12.04.2012, and for a consequential direction to pay incentive increments on the basis of the petitioner acquiring higher qualification in the field of Physical Education (M.Phil), in the light of G.O.Ms.No.1170, Education, Science and Technology Department, dated 20.12.1993, G.O.Ms.No.324, Education, Science and Technology Department, dated 25.04.1995 and G.O.Ms.No.194, School Education, (E2) Department, dated 10.10.2006. The learned Single Judge has allowed the Writ Petition. Challenging the same, the Department is before us with this Writ Appeal.

3.The only ground on which the appellants seek to challenge the correctness of the order passed by the learned Single Judge of this Court, is that in the Government Orders, which were relied on by the learned counsel for the petitioner and referred to in the impugned order, there is no mention about the Physical Directors Grade - I and Government orders are exclusively meant for Post Graduate Assisants. In the regard, learned Standing Counsel for Government has drawn our attention to G.O.Ms.No.324, School Education Department, dated 25.04.1995, and submitted that in respect of teachers in physical education, they are eligible for incentive increments for higher qualification only in physical education.

4.The correctness of the said submission has to be decided in this appeal. We have elaborately heard the learned counsel on either side to find out the answer to this issue.

5.The Government enacted Special Rules for the Tamil Nadu Higher Secondary Educational Service vide G.O.Ms.No.720, Education, dated 28.04.1981. Tamil Nadu Higher Educational Services is under three clauses, which are as follows:

"Special Rules for the Tamil Nadu Higher Secondary Educational Service.

(G.O.Ms.No.720, Education, dated 28th April 1981.)

SECTION - 37

The Tamil Nadu Higher Secondary Educational Service.

1.Constitution. - The service shall consist of the following classes and categories of officers, namely:-

Class.	Category
(1)	(2)
I	Headmasters and Headmistresses in Higher Secondary Schools.
II	1.Teachers in Academic subjects. 2.Teacher in Language.
III	Physical Directors and Physical Directresses in Higher Secondary Schools."



6.Thus, in terms of the Special Rules Physical Directors and Physical Directresses in Higher Secondary Schools fall in Class III Category (2) of category of officers in the Higher Secondary Educational Service. There is no dispute to the fact that the respondent has secured M.Phil. qualification and that has been recorded in the Service Register. However, the Government issued orders for revision of norms for assessment of grant for Teaching Posts in G.O.Ms.No.525 School Education (D1) Department, dated 29.12.1997. In para IV of the said order, the Government has stated that in the XI and XII Standards for the schools with a strength of over 400, one post of Physical Director will be given by upgradation of existing post of Physical Education Teacher. Apart from that all new recruitment of Teaching Posts is being done by the Teachers Recruitment Board (TRB) and by way of illustration one of the notification dated 11.02.2021, has been placed for consideration, from which we find that it is a common notification for direct recruitment for the post of Post Graduate Assistants/Physical Education Directors Grade - I in School Education and other departments. Thus, the Educational Department is consistently treating the Physical Director and Physical Directress as teaching posts.

7.The Hon'ble Supreme Court in **P.S.Ramamaohana Rao v. A.P.Agricultureal Univeristy and another [(1997) 8 SCC 350]**, the question which arises in the said case was whether Physical Director in A.P. Agricultural University is a teacher and entitled to retire only at 60 years and the said issue was answered in the following terms:

"19.We are unable to agree. It may be that the Physical Director gives his guidance or teaching to the students only in the evenings after the regular classes are over. It may also be that the University has not prescribed in writing any theoretical and practical classes for the students so far as physical education is concerned. But as pointed by us earlier, among various duties of the Physical Director, expressly or otherwise, are included the duty to teach the skills of various games as well as their rules and practices. The said duties bring him clearly within the main part of the definition as a "teacher". We therefore, do not accept the contention raised in the additional counter-affidavit of the University."

8.All the above reasons would go to show that the respondent would be entitled for incentive increments. Thus, we find no ground to interfere with the order passed in the Writ Petition. For all what we have stated above as well as what has been noted by the learned Writ Court, the Writ Appeal fails and the same is



accordingly, dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

sj

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 Director of School Education,
Chennai - 600 006.

2.The Chief Educational Officer,
Chief Educational Office,
Collectorate Campus,
Karur.

+1 CC to M/s.GP (SR-23343[F] dated 20/07/2021)

W.A. (MD) No.1166 of 2021

19.07.2021

RD(2.08.2021) 4P 4C