



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Fifteenth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice M.M.SUNDRESH
and
The Hon`ble Mrs.Justice S.ANANTHI

CMP(MD) No.2547 of 2021
IN
WA(MD) No.557 of 2021

- 1 THE GOVERNMENT OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT,
(SCHOOL EDUCATION AND ELEMENTARY EDUCATION DEPARTMENT),
FORT ST.GEORGE, CHENNAI-9
- 2 THE DISTRICT EDUCATIONAL OFFICER,
SANKARANKOVIL, TIRUNELVELI DISTRICT.
- 3 THE BLOCK EDUCATIONAL OFFICER
VASUDEVANALLUR, TIRUNELVELI DISTRICT. ... PETITIONERS/APPELLANTS

Vs

- 1 R.KRISHNASAMY
- 2 THE SECRETARY
V.GANDHI PRIMARY SCHOOL,
VADUDEVANALLUR,
TIRUNELVELI DISTRICT. ... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to Pleased to stay the operation of the impugned order dated 28.02.2020 passed in WP(MD)No.1377 of 2019 until the disposal of the Writ appeal.

PRAYER IN WA(MD) .NO.557/2021:

Writ Appeal is filed under clause 15 of Letters Patent to set aside the order dated 28.02.2020 passed in W.P(MD).NO.1377 of 2019.

PRAYER IN W.P(MD) .NO.1377 of 2019:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to G.O.Ms.No.83 School

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



Education (Elementary Education 1(2) Department dated 28-04-2017 of the first respondent herein in so far as the clause refusing to give monetary benefits from the date of appointment/date of passing higher qualification alone and quash the same and consequently direct the respondents 1 and 2 herein to award incentive increments to the petitioner for his M.A.degree with effect from 02.06.2003 respectively with all attendant benefits and privileges based on the judgment reported in 2008(5) MLJ 1349.

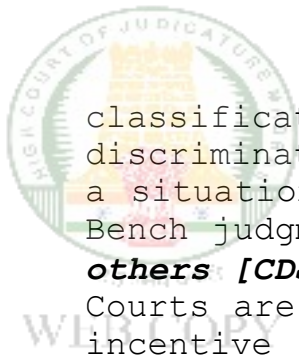
ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MRS.S.SRIMATHI, Special Government Pleader for the petitioners and of Mr.T.PonRamkumar, Advocate for the 1st Respondent, while admitting the Writ Appeal, the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH, J.)

The learned Special Government Pleader appearing for the petitioners submitted that what had been given to the respondent itself was a concession. He was acquiring the qualification even at the time of entering into service. It is not a basic qualification. The Government Order passed in G.O.Ms.No.83 dated 28.04.2017 clearly carves out an exception by giving out its own reason. The concept of giving incentive increment is to encourage a Teacher, who, after entering into service, would be made to acquire more qualification through the incentive scheme. Therefore, the order passed by the learned single Judge requires to be interfered with particularly when the impugned order says that the benefit can be conferred only on certain persons, who are either stagnating in a particular place and who were given appointment due to the situation arose for want of qualified hands. The respondent, who does not fit into those categories, cannot seek incentive as a matter of right. It is for the employer to fix the qualification and by merely acquiring an extra qualification, which is not otherwise required, a person cannot seek as a matter of right an incentive. An incentive by its own nature is to motivate an in-service person to acquire higher qualification in order to benefit himself and the student at large.

2. The learned counsel for the respondent submitted that the orders passed by the Division Bench as confirmed by the Apex Court have been taken note of by the learned single Judge and therefore, the same ratio will have to be followed.

3. Prima facie, we are not in agreement with the orders passed by the Division Bench. It is a policy decision of the petitioners made to encourage a Teacher to acquire more qualification. The impugned Government order also gives the reason for restricting the incentive to a specified number of Teachers. If the respondent does not come under the said category, then, he is not entitled to the incentive. There is no violation of Article 14 involved, as the



classification is perfectly valid. Article 14 would come when the discrimination is hostile as against the valid. We do not find such a situation in the case on hand. With due respect to the Division Bench judgment rendered in ***R.Premakumari v. State of Tamil Nadu and others*** [CDJ 2008 MHC 3188] dated 14.05.2008, we are of the view that Courts are not expected to review the policy decision. Granting of incentive is not a matter of right and therefore, much so, not a fundamental right. In such view of the matter, we are inclined to grant an order of stay pending disposal of the appeal.

4. Post the matter on 09.06.2021.

sd/-
15/03/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SECRETARY TO GOVERNMENT,
THE GOVERNMENT OF TAMIL NADU
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ORDER
IN
CMP (MD) No.2547 of 2021
IN
WA(MD) No.557 of 2021
Date :15/03/2021

NR/VR/SAR-III(19.03.2021) 3P:4C