



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.7821 of 2021

and

W.M.P (MD)No.5963 of 2021

WEB COPY

R.Balasubramanian

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.

2.The Joint Director (Vocational),
Directorate of School Education,
DPI Compound, College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

... Respondents

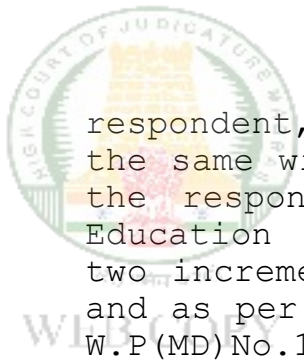
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned G.O.Ms.No.240, School Education Department, dated 18.08.2010 passed by the first respondent and consequential order passed by the third respondent, dated 28.10.2020 bearing Na.Ka.No.2541/A3/2020 and quash the same with regard to cut-off date i.e., 18.08.2010 and directing the respondents to extend the benefits of the G.O.Ms.No.240, School Education Department, dated 18.08.2010 to give one incentive with two increments for acquiring higher qualification to the petitioner and as per the judgment rendered by this Court, dated 17.04.2012 in W.P(MD)No.12817 of 2011.

For Petitioner : Mr.R.Saravanan

For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

ORDER

This Writ Petition is filed seeking for a Writ of Certiorarified Mandamus, calling for the records of the impugned G.O.Ms.No.240, School Education Department, dated 18.08.2010 passed by the first respondent and consequential order passed by the third



respondent, dated 28.10.2020 bearing Na.Ka.No.2541/A3/2020 and quash the same with regard to cut-off date i.e., 18.08.2010 and directing the respondents to extend the benefits of G.O.Ms.No.240, School Education Department, dated 18.08.2010 to give one incentive with two increments for acquiring higher qualification to the petitioner and as per the judgment rendered by this Court, dated 17.04.2012 in W.P(MD)No.12817 of 2011.

2.Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader accepts notice on behalf of the respondents.

3.According to the petitioner, he was appointed as a single part time Vocational Instructor on 01.12.1980 and his service was regularized on 01.04.1990. He attained the age of superannuation on 31.10.2008.

4.The learned counsel appearing for the petitioner submitted that as per G.O.Ms.No.240, School Education Department, dated 18.08.2010, the petitioner is entitled to receive one incentive with two increments for acquiring higher qualifications. Hence, the petitioner filed a Writ Petition in W.P(MD)No.9948 of 2020 and the said Writ Petition was allowed on 15.08.2020, by directing the respondents to consider his representation. As per the order of this Court, the petitioner's representation was considered and rejected by the third respondent by the impugned order, dated 28.10.2020. Challenging the said impugned order, the petitioner has come out with the present Writ Petition. The learned counsel appearing for the petitioner further submitted that the reason given by the third respondent in the impugned order is erroneous as the persons, who have acquired higher qualification even before the date of G.O are also entitled to incentive increments and relied on the Judgment of the Division Bench of this Court made in W.P.No.12261 of 2004, dated 26.06.2008 (R.Kallanda Perumal Vs. the Registrar and others).

5.Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader appearing for the respondents submitted that the petitioner retired from service on 31.10.2008 on attaining the age of superannuation, even before issuance of G.O. Hence, he is not entitled to the benefit of G.O. The petitioner made belated claim and hence, the claim of the petitioner was considered and rejected. The learned Additional Government Pleader relied on the order of this Court, dated 20.03.2018 made in W.P(MD)No.5789 of 2013 (S.Joseph Alphonse Raj Vs. The Secretary to Government and others). The relevant portions of the said order read as follows:-

"9.In respect of the present writ petition, the Government issued G.O.Ms.No.240, dated 18.08.2010 as far as the Vocational Instructor working in School are concerned. Therefore, the said G.O., was issued only for the benefit of Vocational Instructor working in Government schools. However, the scheme of incentives increments was



introduced for the Vocational Instructor first time the Government thought fit to grant monitory benefits with effect from the date of the issuance of the Government Order. Thus, it is the policy decision taken by the Government taking into account the financial constraints. If the benefits are extended with retrospective effect and this Court is of an opinion that the same will have huge monitory implications. The Courts cannot enlarge the scope of the Government Order in this regard.

10.The scheme of incentives being a concession cannot be claimed as a matter or right. The concession has to be availed on the basis of the terms and conditions stipulated. However, such concession cannot constitute right and the Government can even cancel the concession granted in respect of these Teachers. Such schemes are to be implemented in its terms and conditions and therefore, the cut off date fixed by the Government in this regard cannot be set to be illegal.

11.The learned counsel for the writ petitioner referred to the order passed by this Court on 16.04.2012 in W.P.(MD) No.960 of 2011, paragraphs 9 and 10 of the above judgment are extracted here under:

"9.It is not in dispute that other teachers are granted incentive increments from the date on, which they acquired higher qualification. If those teachers acquired higher qualification, even before joining service, they are given incentive increment from the date of joining service. It if is so, it is not fair to deny the same to the petitioners. In fact, the Vocational Teachers were also granted incentive increments, but the same was withdrawn by the authorities leading to the filing of batch of writ petitions and the batch was allowed as stated above.

10.In these circumstances, I am of the view that the first respondent is not correct in treating the vocational teachers differently. Therefore, the portion of the impugned order, which restricts the payment of incentive increments only from the date of issuing of the order for acquiring the higher qualification is quashed and the writ petition is allowed as prayed for."

12.The learned counsel for the writ petitioner states that a particular portion of G.O., was already quashed.



However, the above said judgment may not have any implication in respect of the facts and circumstances of the present writ petition, in view of the fact that the writ petitioner retired from service on 31.05.2009 itself. Therefore, the very benefit granted in the G.O., cannot be granted to the writ petitioner.

13. On a perusal of the Government Order, it is very clearly enumerated that the incentive increments are to be granted in respect of the Vocational Instructor, who are in service. The G.O., repeatedly emphasised with the Vocational Teachers, who are in service alone are entitled for the incentive increments to be granted for acquiring additional qualification. Thus, the G.O. Ms. No. 240, School Education Department, dated 18.08.2010, is not applicable to the writ petitioner.

14. As far as the writ petitioner is concerned, he had retired from service on 31.05.2009 before the issuance of G.O. Ms. No. 240, dated 18.08.2010. Thus, the claim of the writ petitioner deserves no consideration at all. The judgment cited also may not have any application in respect of the facts and circumstances of the case on hand. Thus, the writ petitioner is not entitled for the relief as such sought for in this writ petition."

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7. From the rival submissions made on either side, it is seen that the third respondent passed the impugned order by rejecting the request of the petitioner for incentive increments, as he had retired on 31.10.2008, before issuance of G.O. Ms. No. 240, School Education Department, dated 18.08.2010. The contention of the learned counsel for the petitioner is that the third respondent rejected the request of the petitioner on the ground that he acquired higher qualification before the cut-off date is not correct. From the perusal of the impugned order, it is seen that the third respondent rejected the claim of the petitioner only on the ground that he was not in service on the date of G.O. Further, the petitioner has made a representation only in the year 2020 for incentive increments from the year 1995. The third respondent has considered the request of the petitioner and rightly rejected the same and the Judgment relied on by the learned counsel for the petitioner in W.P. No. 12261 of 2004, dated 26.06.2008, is not applicable to the facts of the case. But, this Court considered the issue elaborately and rejected the claim of the petitioner therein in W.P(MD) No. 5789 of 2013, dated 20.03.2018, which is squarely applicable to the facts of the present case. Accordingly, the Writ



W.P(MD)No.7821 of 2021

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

Sd/-

Assistant Registrar (CO)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

ps

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 Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.

2.The Joint Director (Vocational),
Directorate of School Education,
DPI Compound, College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-16685[F] dated 20/04/2021)

+1 CC to M/s.SPL GP (SR-16736[F] dated 20/04/2021)

**W.P(MD)No.7821 of 2021
19.04.2021**

RK(25.05.2021) 5P 6C