



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.1299 of 2020

and C.M.P. (MD) No.7424 of 2020

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
(School Educational and Elementary
Educational Department),
Fort St. George, Chennai - 600 009.
2. The District Educational Officer,
Sivakasi, Virudhunagar District.
... 1st & 2nd Appellants/
1st & 2nd Respondents

Vs.

1. Govindan ... 1st Respondent/Writ Petitioner
2. The Secretary,
Nadar Higher Secondary School,
Watrap - 626 132,
Virudhunagar District. ... 2nd Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 28.02.2020, in W.P.[MD]No.58 of 2019.

Prayer in WP(MD). 58/ 2019 :

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 relating to G.O.Ms.No.83 School Education (Elementary Education 1 (2)) Department dated 28.04.2017 of the 1st respondent herein in so far as the clause refusing to give monetary benefits from date of appointment / date of passing higher qualification and refusing to extend the benefits to those appointments made before and after 1997 to 2000 alone and quash the same and consequential order passed by the 2nd respondent in O.Mu.No.4149/A3/2018, dated.06.12.2018 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.



For Appellants : Mr.R.Baskaran
Standing Counsel for Government
For Respondent No.1 : Mr.T.Pon Ramkumar

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JUDGMENT

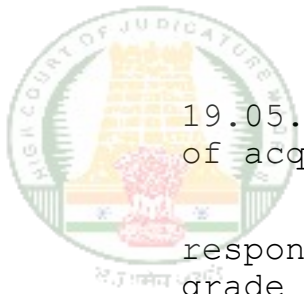
[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.Baskaran, learned Standing Counsel for Government, appearing for the appellants and Mr.T.Pon Ramkumar, learned counsel for respondent No.1.

2.This Writ Appeal filed by the State is directed against the order dated 28.02.2020, in W.P.(MD) No.58 of 2019. The said Writ Petition was filed by the first respondent challenging the Government Order in G.O.Ms.No.83 School Education (Elementary Education 1 (2)) Department, dated 28.04.2017, of the first appellant insofar as the clause refusing to give monetary benefits from the date of appointment/date of passing higher qualification and refusing to extend the benefits to those appointments made before and after 1997 to 2000 alone and the consequential order passed by the second appellant in O.Mu.No.4149/A3/2018, dated 06.12.2018, and to award incentive increments to the first respondent/Writ Petitioner for his M.A. Degree with effect from 02.06.2003. The Writ Petition was allowed by the learned Single Judge. Aggrieved by the said order, the appellants have filed this Writ Appeal.

3.It is not disputed by the appellants that an identical issue was considered by us in the case of **The Government of Tamil Nadu, Rep. by its Secretary to Government, School Education and Elementary Education Department, Chennai and two others v. K.Muniyandi and another in W.A.(MD) No.616 of 2021, dated 17.04.2021**. The only distinction between the fact of the said case and the case on hand is the Higher Qualification was M.Ed. Degree, whereas in the case on hand is M.A. Degree. After taking note of the contentions, which was advanced before us and not specifically advanced before the learned Single Judge, we dismissed the appeal filed by the Government. The operative portion of the judgment reads as follows:

"6.Before us, the learned Special Government Pleader raised a different contention, which was not specifically raised before the learned Writ Court. The contention being that the first respondent has acquired his M.Ed. in the year 1998 and on the said date the first respondent having not completed the one month Child Psychology Training given to Graduate Teachers, who were appointed as Secondary Grade Teacher between 11.07.1995 to



19.05.1998, would not be entitled to any benefit on account of acquiring such higher qualification.

7.The undisputed facts are that the first respondent, a graduate teacher was appointed as secondary grade teacher and the Government by G.O.Ms.No.559, Education, Science and Technology Department, dated 11.07.1995, directed cancellation of the appointments on the ground that they do not possess a Diploma in Teacher Education. The fact being that due to lack of candidates possessing Diploma in Teacher Education, Graduate Teachers were appointed as Secondary Grade Teachers with a specific condition that they will not claim B.T. Assistant Scale or will not claim incentive increment for B.Ed. degree. The Government by G.O.Ms.No.113, School Education [S1] Department, dated 14.03.1997, taking into account the non-availability of SC/ST candidates in Employment Exchange, permitted appointment of Graduate Teachers in both Government and Private Schools. The first respondent/writ petitioner is a Scheduled Caste candidate and appointed as Secondary Grade Teacher on 03.01.1997 with a condition that he will not claim incentive increments for his B.Ed. qualification. The appointment was approved on 08.05.1998, subject to certain conditions. Since the Government issued G.O.Ms.No.559, Education, Science and Technology Department, dated 11.07.1995, seeking to cancel the appointment of Graduate Teachers in Secondary Grade Teachers post, Writ Petitions were filed by the first respondent and others. However, all of them were dismissed by order dated 19.05.1998. Subsequently, the first respondent and other similarly placed persons had filed Writ Appeals and continued to work as Secondary Grade Teachers. During the year 1998, the first respondent sought permission from the Department and pursued M.Ed. qualification and after obtaining permission, he had secured the M.Ed. qualification in the year 1989. Even thereafter, in the year 1999, by G.O.Ms.No.301, School Education Department, dated 15.10.1999, the Government permitted appointment of Graduate Teachers in both Government and Private Schools due to non-availability of SC/ST candidates. The Writ Appeals were disposed of by a common judgment, dated 09.06.2001, in the case of **Secretary & Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School v. The State of Tamil Nadu [2002 W.L.R. 173]** with a direction to the appellant Department to approve the appointments, which were made between 11.07.1995 to 19.05.1998 and also leaving it open to the Government to give them proper training. Accordingly, G.O.Ms.No.155, School Education Department, dated 03.10.2002 was passed and the Government directed the first respondent and other similarly placed persons to



undergo one month Child Psychology Training. There was a specific condition that only after completion of the training, the salary will be fixed and in respect of those Secondary Grade Teachers, who have received salary already were directed to refund the same and ordered re-fixation of salary and calculation of pension period only from the date of completion of Child Psychology Training. Challenging G.O.Ms.No.155, School Education Department, dated 03.10.2002, batch of Writ petitions were filed. In the meantime, the first respondent was sent for training and he underwent the same between 02.05.2003 and 31.05.2003 and taking into consideration the completion of the training, the appointment of the first respondent was approved with effect from 02.06.2003. The Writ petitions challenging G.O.Ms No. 155, School Education Department, dated 03.10.2002, were disposed of by the decision in ***The State of Tamil Nadu & others v. Pallivasal Primary School [2004-2-L.W. 591]***, whereby, the order of recovery was set aside and in respect of the teachers who did not receive the salary, it was held that they are not entitled for arrears. Further, it was held that only from the date of completion of Child Psychology Training, the pay will be fixed and the past services of the teachers can be counted for pension. Since claims for payment of incentive increment were made and were not granted, batch of Writ Petitions in W.P.(MD) No. 21895 of 2015 etc., batch were filed, which were allowed by order dated 08.12.2015, following the decision ***R.Premkumari*** (supra). The appellants against the said order filed appeals in W.A.(MD) No. 895 of 2013 etc., batch cases, which were dismissed on 05.03.2018. The Government by G.O.Ms.No.83, School Education (Elementary Education) 1 (2) Department, dated 28.04. 2017, directed grant of incentive increment to Secondary Grade Teachers, who were appointed between 1997 to 2000 with effect from 28.04.2017. Based on the said Government Order, the first respondent was granted incentive increment for acquiring M.Ed. Qualification, notionally and monetary benefits with effect from 28.04.1997 and therefore, the first respondent was aggrieved, resultantly, constrained to challenge that portion of the Government Order and the consequential relief for securing M.Ed. qualification from 02.06.2003, the date on which the first respondent's appointment was approved.

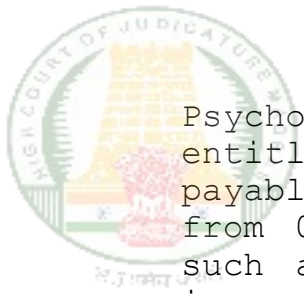
8.The argument of the learned Special Government Pleader is that M.Ed. qualification acquired by the first respondent was prior to the approval of his appointment which he acquired in the year 1989 and whatever qualification which was acquired by him earlier to 02.06.2003 cannot be considered. In this regard, the learned Special Government Pleader had referred to the



decision of this Court in **Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School v. The State of Tamil Nadu [2003 Writ L.R. 173]** and in the **Pallivasal Primary School** (supra). It is further submitted that in the decision **Pallivasal Primary School** (supra), the Hon'ble Division Bench, held that the teachers right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification and that the Government has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in Child Psychology. Therefore, it was held that there is nothing wrong in Government directing that their approval / confirmation can be only be on and after the date they complete the training and their past service, however, shall count for pension.

9.The decision in **R.Premkumari** (supra) and **Pallivasal Primary School** (supra) cannot support the stand taken by the learned Special Government Pleader. It is not in dispute that the first respondent's appointment has been approved from 02.06.2003. The first respondent has not made any claim for payment of incentive increment from the date anterior to 02.06.2003. The fact that G.O.Ms.No.83, School Education (Elementary Education) 1(2) Department, dated 28.04.2017, directed grant of incentive increment to Secondary Grade Teachers, who where appointed between 1997 to 2000, was not disputed. Rather, the Government Order confirmed that the Secondary Grade Teachers, who were appointed between 1997 and 2000 were entitled to incentive increments for acquiring higher qualification. The only issue is with regard to the date from which the monetary benefit was granted i.e., 28.04.2017 and the question would be whether monetary benefit can be restricted to 28.04.2017, the date of the Government Order, when the Government Order notionally grants the same from the date of acquiring the qualifications.

10.Two reasons were set out to deny the incentive increment for acquiring higher qualification is being an undertaking given by the first respondent. This undertaking was held to be not a bar to claim incentive increment for higher qualification. However, in the instant case, the first respondent has not claimed incentive increment for acquiring B.Ed. qualification, rather his claim is for securing M.Ed. qualification in the year 1989, which he obtained after getting permission from the Department. The first respondent does not claim monetary benefit from the date of acquisition of M.Ed. qualification i.e., from 1999 but he has claimed only from 02.06.2003, the date on which his appointment was approved after undergoing Child



Psychology Training. Therefore, the first respondent is entitled to Scale of Pay and other monetary benefits payable to the post of Secondary Grade Teacher with effect from 02.06.2003. Therefore all benefits, which flow from such approval, including his right to seek an incentive increments should flow from the said date.

11.It was argued that no person has got vested right for claiming incentive increment. Though this submission may be partially right, it is the policy decision taken by the Government to grant incentive increment to teachers to encourage them to acquire higher qualification, which will undoubtedly help the students. Thus, when the Government has taken a policy decision to grant incentive increment, the teacher, who has acquired higher qualification is entitled to apply and seek for incentive increment. If it is denied, this Court can consider as to whether the reason for denial is just and proper. In the instant case, first respondent was not at all denied incentive increment, rather he has granted notionally in terms of G.O.Ms.83, School Education (Elementary Education) 1(2) Department, dated 28.04.2017, but the monetary benefits only from the date of the Government Order dated 28.04.2017. This restriction of the date has absolutely no nexus to the object sought to be achieved by introducing the scheme to grant increment to encourage the teachers, who acquired higher qualification, thereby increasing the standard of education and this is precisely the reason, the increment has been termed as an incentive increment.

12.The learned Special Government Pleader seeks to stretch the matter too far by arguing that the very acquisition of M.Ed., decree itself cannot be relied on by the first respondent for the purpose of claiming incentive increment, because it was acquired prior to the first respondent completing the Child Psychology Training and prior to his approval of appointment. This argument has to necessarily fail as the appointment of the first respondent has been approved. Such approval enures in favour of the first respondent from the date of his appointment. But the condition being that they will be entitled to the requisite scale of pay only on completion of Child Psychology Training. It was completed by the first respondent on 31.05.2003 and his appointment was approved on 02.06.2003, to mean that the first respondent will be entitled for payment of B.T. Assistant Scale from the said date. Therefore, the appellants are not justified in contending that M.Ed. degree cannot be relied upon by the first respondent for claiming increment. Thus, for the above reasons, we are of the view that the first respondent is entitled for payment of incentive increment for acquisition of M.Ed. qualification with effect from 02.06.2003.



13. In the result, the Writ Appeal is dismissed for the reasons stated above along with the reasons given by the learned Writ Court while allowing the Writ Petition. Consequently, connected Miscellaneous Petition is closed. No costs. "

4. Since the legal issue has been answered in favour of the first respondent/writ petitioner in the above mentioned judgment, the said decision will apply in full force to the case on hand. Thus, following the above decision, this Writ Appeal is dismissed and order passed in W.P.(MD) No.58 of 2019, dated 28.02.2020 is confirmed for the reasons, which we have assigned in W.A.(MD) No.616 of 2021 along with the reasons assigned by the learned Single Bench. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /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 Secretary to Government,
School Educational and Elementary
Educational Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2. The District Educational Officer,
Sivakasi, Virudhunagar District.

+1 CC to M/s.T.PON RAM KUMAR, Advocate(SR-21997[F] dated 09/07/2021)

W.A. [MD]No.1299 of 2020
08.07.2021

RC (22.07.2021) 7P-4C