



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2021

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.1634 of 2018

C.Pandiammal

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Sivagangai,
Sivagangai District.

2.The Additional Assistant
Elementary Educational Officer,
Kalayarkovil,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in Pa.Mu.NO.4254/Aa4/2017 dated 12.12.2017 and quash the same and consequently direct the respondents to award increment to the petitioner for acquiring M.Com., Degree within a time stipulated by this Court.

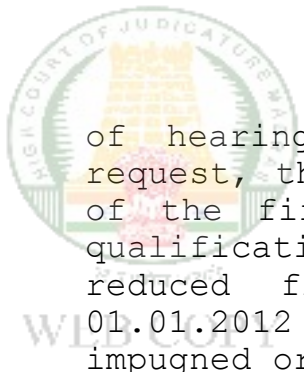
For Petitioner : Mr.P.Gunasekaran
For Respondents : Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The petitioner was appointed as a Secondary Grade Assistant in Panchayat Union Primary School, Sivagangai on 28.02.2008 and joined duty on the very next day. At the time of filing the Writ Petition, after several postings in different schools, she had been employed as Secondary Grade Teacher in Sivagangai District itself.

2. She seeks a Certiorarified Mandamus calling for and for quashing the order passed by the first respondent i.e the District Elementary Educational Officer, dated 12.12.2017 and a consequential direction to the respondents to award increment to her for acquiring Post Graduate degree (M.Com in Commerce).

3. The impugned order rejects the request of the petitioner seeking second increment for acquisition of Post Graduate degree, and has, incidentally, been passed without affording any opportunity



of hearing to the petitioner. Not content with rejecting the request, the second respondent has also passed an order of recovery of the first incentive granted to her for acquisition of B.Ed. qualification, as a result of which, the pay of the petitioner stood reduced from Rs.15,540/- to Rs.13,380/- retrospectively from 01.01.2012 and that amount sought is to be recovered under the impugned order.

4. The question that arises in the present case is the entitlement of the petitioner to two (2) increments, firstly, for acquisition of B.Ed. degree and secondly, for the acquisition of a Post Graduate degree. As regards entitlement to the first incentive, my attention is drawn to Government Order in G.O.Ms.No.42, Education Department dated 10.01.1969 that reads as follows:

*G.O.MS.NO.42 Education dept, dated 10th January 1969.
Education - Fourth Five Year Plan - Scheme for Incentive Payments and awards to teachers during 1968-69 Sanctioned.
Read: The following papers*

From the Director of School Education, letter No. 186476/PD1/67 Dt. 3d October 1967 and 26th June 68.

The Government have already accepted in principle that incentive payments and awards should be given to the teachers in schools who acquire higher educational qualifications. The Director of School Education has accordingly submitted proposals as indicated in Annexure to this order.

2. The Government approve of the proposals of the Director of School Education and direct that advance increments be granted to them as indicated in the Annexure.

3. The expenditure should be debited to 28 Education Z development schemes-Schemes in Fourth Five Year Plan-Miscellaneous -O-Incentive Payment and awards to teachers. The Director of School Education is requested to take action to provide additional funds required by reappropriation from savings.

4. This order issues with the concurrence of the Finance Vide its U.O.No.410/PIX/69-1.dt. 7th January 1969.

(By order of the Governor)

5. A perusal of the Government Order would indicate the inclination of the State to award incentive to Teachers who have acquired higher educational qualifications. Thus, the first incentive increment granted to the petitioner is in line with G.O.Ms.No.42 dated 10.01.1969. The spirit and intention of the aforesaid Government Order was to encourage Teachers who pursue their academic inclination without stagnation. It is to this effect that the petitioner has pursued her Post Graduation in Commerce and as such, I find that the first increment granted to the petitioner is in line of



both the spirit and language of G.O.Ms.No.42 dated 10.01.1969. Impugned recovery initiated in terms of the impugned order has thus no legs to stand and is set aside.

6. Coming to the second incentive increment, the arguments advanced on behalf of the State is that the Post Graduate degree obtained by the petitioner is in commerce, which does not form the subject of study for Classes 1 to 8. In my view, this submission is myopic. Commerce is a subject that overlaps, and has a bearing upon, several subjects such as mathematics, economics and civics that are part of the syllabus for school students. The argument of the respondents ignores the impact of commerce upon the understanding of other subjects and is thus rejected as being incorrect and shortsighted.

7. That apart, even otherwise, reliance placed by the learned Special Government Pleader on G.O.Ms.No.907, Personnel and Administrative Reforms (FR.II) Department dated 17.09.1986, in this context, is also found to be misplaced. The aforesaid Government Order imposes certain conditions for the sanction of incentive increment and reads thus:

*"PERSONNEL AND ADMINISTRATIVE REFORMS (FR.II) DEPARTMENT
G.O.Ms.No.907 Dated: 17.9.1986
Purattasi 1, Akshaya, Thiruvalluvar Aandu 2017*

*Read : 1.G.O.Ms.No.843, Personnel and Administrative
Reforms (FR.II) Department, dated 5.9.1983.*

*2.G.O.Ms.No.1159, Personnel and Administrative
Reforms (FR.II) Department, dated 21.11.1984
ORDER:*

The Fourth Pay Commission examined the scheme of sanction of advance increment for acquiring higher qualifications. It recommended a scheme of 'Personal Pay' in the place of advance increment. As far as the Education Department is concerned, it has recommended that the teachers should be made eligible for the incentive increments only for acquiring higher qualifications in the area of their specialisation.

2. Several Service Associations have represented that the present scheme of advance increment may itself be continued instead of the new scheme of personal pay, as recommended by the Fourth Pay Commission. The matter was referred to the One Man Committee. It has recommended that the old scheme of incentive increment may be allowed to continue. However, it has held that the higher qualifications should be relevant to the area of specialization instead of in any subject.



3. The Government accept the above recommendation of the One Man Committee. Accordingly, they direct that the scheme of incentive increments now in vogue be allowed to continue subject to the modification stipulated below :-

The higher qualification should be with reference to the area of specialization instead of in any subject. For example, Post Graduate Degree in Political Science or Public Administration acquired by a Tamil Pandit serves no purpose. In such cases, incentive increment should not be sanctioned. However, this order does not apply to such cases where incentive increment has already been sanctioned or yet to be sanctioned for qualifications acquired prior to the date of issue of this order.

4. This order takes effect from the date of issue “.

5. This order issues with the concurrence of the Finance Department-vide its

U.O.No.11A/O.S.D./86, dated 12.9.1986.

8. The condition imposed under G.O.Ms.No.907 was clarified and further amplified in G.O.Ms.No.624 Education (E 2) Department dated 13.07.1992, under which the following four (4) conditions had been imposed for the grant of incentives:

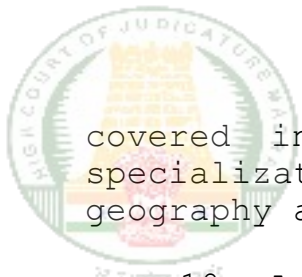
a. that the grant of incentive to a teacher for acquiring higher qualification in a particular subject should be on the condition that the teacher should be required to reach the additional subject based upon needs, in addition to his basic subject.

b. The Director of School Education should judge the relevance of the subjects for allowing the grant of incentives to the past cases i.e from 17.09.1986 to 1991-92 and such grant will have only prospective effect.

c. From 1992-93, Sanction of Incentive increment should be with reference to developing areas of study and subjects where teacher's shortage has been identified. The special subject for which higher qualification would become eligible or incentive shall be identified by the Director of School Education.

d. In future physical Education Teacher incentive increment will be only in the area of Physical Education the Director of School Education will identify the relevant Courses.

9. The narrow view taken by the Government in G.O.Ms.Nos.907 and 624 dated 13.07.1992 and 25.04.2005 respectively came to be pointed out and objected to by various teachers associations wherein they urge that the State re-consider its view in regard to the conditions imposed. Even otherwise, very many subjects that are



covered in secondary school syllabus may not have courses of specialization in Under Graduate or Post Graduate level such as geography and civics.

10. As a result of the representations filed, the State has, and rightly, reversed the conditions imposed under the aforesaid orders and this reversal found place in G.O.Ms.No.324, Education Science and Technology Department (E2), dated 25.04.2005. The history and narration of this issue and the relief granted by the State has been captured in G.O.Nos.324 to the following effect:

EDUCATION SCIENCE AND TECHNOLOGY DEPARTMENT (E2)

G.O.Ms.No.324

Date: 25.04.2005

Order:

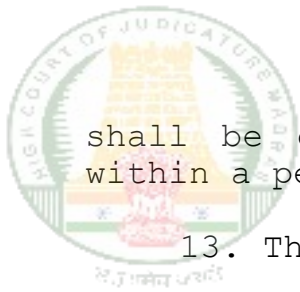
1. The scheme for the grant of incentives to teachers for acquiring higher qualification was introduced in the G.O. first and above. It provided for grant of incentives (equivalent to 2 increments) acquiring higher qualification in any degree courses of study referred to therein. On the basis of this GO. Various Orders were issued for the grant of incentives to different categories of teachers in the references second to fifth read above.

2. The Government in the GO sixth read above have issued orders based on the recommendations of the Fourth Pay Commissioner that the higher qualification for the purpose of grant of incentives should be with reference to the area of Specialization, instead of in any subject. As the above orders led to a lot of representations by the Various Teacher Association Government issued the orders in G.O.Ms.No.624 Education dated 13.07.1992, introducing the following four conditions for grant of incentives:

(Four(4) conditions are extracted in paragraph No.6 above)

11. Thus, with issuance of G.O.Ms.No.324, 25.04.2005, the conditions imposed earlier stand effaced. The earliest Government Order issued in this connection, is in the spirit of encouragement and to stimulate the appetite of teachers for study and exploration of different subjects. Any curtailment in this regard would be anathema and the removal of the conditions is, in my view, a proper and appropriate move.

12. In light of the discussion above, the petitioner is liable to succeed on both counts. As far as recovery of the first incentive increment already granted is concerned, the same is set aside. As far as rejection of the request for second incentive increment is concerned, considering the eligibility of the petitioner in this regard, in my view, she is entitled to the second increment, which



shall be computed by the first respondent and paid over to her within a period of 12 weeks from today.

13. This Writ Petition is allowed as above. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM

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 District Elementary Educational Officer,
Sivagangai,
Sivagangai District.

2.The Additional Assistant
Elementary Educational Officer,
Kalayarkovil,
Sivagangai District.

+1 CC to M/s.SPL GP (SR-35348[F] dated 22/11/2021)

W.P. (MD) No.1634 of 2018

19.11.2021

na (CO)

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