



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.6658 of 2015

and

M.P. (MD)Nos.2 and 3 of 2015

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V.S.Latha

... Petitioner

vs.

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

2.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

3.The District Educational Officer,
Thuckalay-629 175,
Kanyakumari District.

4.The Secretary,
A.V.D.Higher Secondary School,
Ganapathipuram- 629 502,
Kanyakumari District.

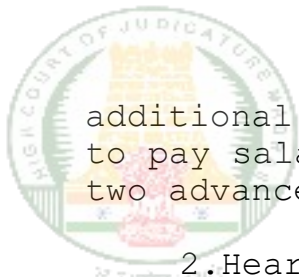
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for records relating to the impugned proceedings issued by the third respondent District Educational Officer in Na.Ka.No.7496/A2/2014 dated 24.02.2015 (cancelling the incentive increment sanctioned to the petitioner and to further direct the petitioner to repay the two advance incentive increments already paid with effect from 27.05.1999 for acquiring the additional qualification of M.Ed. Degree) to quash the same and to further direct the respondents herein to continue to pay salary of the petitioner from the month of February 2015 with two advanced incentive increment which the petitioner has been drawing since 27.05.1999 with all attendant benefits.

For Petitioner : Mr.Ragatheesh
for M/s.Issac Associates
For R1 to R3 : Mr.R.Suresh Kumar
Government Advocate

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the third respondent, dated 24.02.2015, cancelling the incentive increments to the petitioner and directing the petitioner to repay the two incentive increments already paid to him for acquiring



additional qualification and to direct the respondents to continue to pay salary to the petitioner from the month of February 2015 with two advance incentive increments along with all attendant benefits.

2. Heard Mr. Ragatheesh, learned Counsel appearing for the petitioner and Mr. R. Suresh Kumar, learned Government Advocate appearing for the respondents 1 to 3.

3. The petitioner was appointed as Secondary Grade Teacher in the fourth respondent School, namely, A.V.D. Higher Secondary School, Ganapathypuram, Kanyakumari District. Even at the time of appointment, the petitioner possessed B.Sc., and B.Ed. Though the minimum prescribed qualification for the post of Secondary Grade Teacher is a Diploma in Teacher Education, the petitioner was appointed with higher qualification with effect from 04.06.1993. It is not disputed that the petitioner's appointment was approved by the first respondent. However, the approval was subject to the following conditions:

a) The petitioner shall not claim any scale of pay admissible for Graduate Teacher.

b) The petitioner shall not claim incentive increments for higher qualifications.

c) The petitioner shall be paid only in the scale of pay admissible to Secondary Grade Teacher.

4. The approval of the petitioner's appointment though was on 18.10.1996, it was with effect from 04.06.1993. It is stated by the petitioner that after the petitioner's appointment, the petitioner acquired M.Ed degree from Annamalai University in the year 1999. It is also stated that as per G.O.Ms.No.42 (Education), dated 10.01.1969, the petitioner became eligible to get two advance incentive increment for acquiring M.Ed., degree. When the petitioner made an application requesting for incentive increment for acquiring M.Ed degree, the third respondent sanctioned the incentive increments by proceedings, dated 08.05.2010, with effect from 27.05.1999. The petitioner was receiving pay with two additional increments for acquiring higher qualification. However, by the impugned order, the third respondent cancelled the increments sanctioned to the petitioner for acquiring M.Ed., degree and instructed the School to submit the salary bill without incentive increment and to recover the money paid towards the incentive increments from the petitioner. Challenging the order, dated 24.02.2015, cancelling the increment and to recover the entire amount paid to the petitioner towards the incentive increment for acquiring M.Ed degree, the above Writ Petition is filed.

5. The learned Counsel appearing for the petitioner submitted that the undertaking given by the petitioner was that she will not claim incentive increment for the higher qualification, she had at the time of appointment and that the petitioner cannot be denied incentive increment for acquiring M.Ed qualification in 1999. It is



further submitted that there is no Government Order to deny the benefit of G.O.Ms.No.42, dated 10.01.1969, for getting two incentive increments for acquiring higher qualifications after appointment.

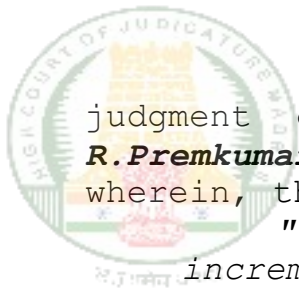
6.The learned Counsel for the petitioner relied upon a judgment of a learned Single Judge of this Court in the case of **G.Meenolachini vs Chief Educational Officer, Trichy and others**, reported in (2014) 8 MLJ 746, wherein, similar issue was considered and this Court has held as follows:

"7.A reply affidavit is filed by the respondents, wherein the aforesaid facts are not disputed. It is stated therein that though the petitioner did not possess Secondary Grade qualification, she was appointed as Secondary Grade Teacher based on her B.T. qualification. At the time of appointment, it was made clear that the petitioner could not be given incentive increment for acquiring higher qualification.

8.Heard the submissions made on either side and perused the materials available on record.

9.If the petitioner is granted incentive increment for her degree and B.Ed. qualification, while she was holding the post of Secondary Grade Teacher, the same are not correct and the excess amount paid towards incentive increment for the degree and B.Ed., qualification shall be recovered and refixation shall be made. But it is not so. On the other hand, the petitioner claims incentive increment for acquiring Post Graduate Degree namely M.A., and M.Ed. The very purpose of granting incentive increment is to encourage the Teachers to acquire higher qualification as the same would ultimately benefit the students. The knowledge acquired by the Teachers by acquiring higher qualification is rewarded by way of incentive increment only for the benefit of the students. The petitioner acquired Post Graduate Degree as well as M.Ed., qualification for which incentive increment was rightly paid. But unfortunately, the audit made objection as if the petitioner is not entitled to incentive increment for higher qualification, namely degree and B.Ed., which was a condition made at the time of appointment. Since the petitioner was appointed as Secondary Grade Teacher, due to the non availability of Secondary Grade qualified persons, a condition was imposed that the such Teacher could not claim incentive increment for the degree and B.Ed., qualification. But the same cannot be stretched to deny incentive increment for the Post Graduate degree and M.Ed., obtained by the petitioner for which, incentive increments were given in 1990 and 1999 respectively, while the petitioner joined in service in 1987."

<https://hcservices.courts.gov.in/hcservices/> 7.The learned Counsel for the petitioner also relied upon a



judgment of Divisional Bench of this Court in the case of **R.Premkumari vs State of Tamil Nadu**, reported in (2008) 5 MLJ 1349, wherein, this Court has held as follows:

"7.The learned single Judge has observed "Incentive increments are granted only for persons acquiring higher qualifications while in service but not to a person, who possess a higher qualification even before entering into service".

8.We do not think the aforesaid observation of the learned single Judge can stand the scrutiny of logic or even reality. The obvious intention in granting an incentive increment is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification, even though in service, so that the quality of service would improve. This is obviously on the assumption that a higher qualified person could work more efficiently. Therefore, it defies logic as to why a person who had already qualified would not get an incentive increment, if such an incentive increment is given to a lower qualified person in service, who acquires subsequently such higher qualification. Such a differential treatment would not stand the scrutiny of right to equality as enshrined in Articles 14 and 16 of the Constitution.

9.That apart, if the relevant G.Os are examined carefully, it can be safely concluded that the G.Os in reality do not intend to lay down in the manner it has been now concluded by the learned single Judge. We have already extracted the relevant portions of the G.Os. The underlined portion of G.O.Ms.No.42 dated 10.01.1969 indicates that if a person possessing higher qualification enters into service, his initial pay may be fixed by giving advance increments. Similarly, in the subsequent G.O.Ms.No.747, dated 18.08.1986, paragraph 2 makes it clear that "the P.G teachers and Headmasters of Higher Secondary Schools who possess or acquire Post Graduate qualification in education i.e. M.Ed., Degree shall be granted two advance increments in the scales of pay admissible to them". It is nowhere contemplated in the G.Os., that the incentive increments would be given only to those who acquired subsequently the qualification, but it would be given to all those who either possess, which means the degree is obtained at the time of entering into service or acquire, which means the degree is obtained after entering into service. Even the subsequent G.Os or the clarifications, nowhere indicate that in order to be eligible for getting incentive increment, the person has to acquire such higher qualification only after entering into service and not otherwise. Therefore, we are unable to accept the



conclusion of the learned single Judge that a person who enters into service after having acquired a higher qualification, is not entitled to get incentive increments.

10. Since the impugned order was passed on the basis that the appellant was not entitled to receive incentive increments having entered into service with higher qualification is now disapproved by us, the authorities are required to consider the matter afresh in the light of the conclusion already made to the effect that the appellant was entitled to receive such increments at the time of entry into service".

8. The learned Counsel for the petitioner also relied upon yet another judgment of this Court, dated 17.07.2012, in the case of **S.Saleth Mary vs The Director of Elementary Education, Chennai and others**, in W.P.(MD)No.1049 of 2012, wherein, this Court allowed the Writ Petition filed by a Secondary Grade Teacher, who was appointed with higher qualification and claimed incentive increment for acquiring higher qualification after appointment. As against the order allowing the Writ Petition, the respondents therein preferred an appeal in W.A.(MD)No.895 of 2013. The Honourable Divisional Bench of this Court dismissed the appeal. The relevant portion of the judgment rendered by the Honourable Divisional Bench reads as follows:

"3. The reason for refusing the incentive increment is on ground that the writ petitioners when they were appointed had given an undertaking that they will not claim incentive increment when they acquire higher qualification.

4. Similar issue was considered by the Division Bench in the case of State of Tamil Nadu v. Louis in W.A.(MD) No.511 of 2011 dated 27.06.2011. After considering the objections raised by the Government, which is similar to objections raised in these appeals, the Court pointed out that the respondent therein, had acquired higher qualification M.Sc., and M.Ed., and acquiring higher education will not prevent the writ petitioners from claiming the incentive increment for higher qualification. Therefore, the order passed by the writ Court, granting relief to the teacher was affirmed and the appeal filed by the State was dismissed. The State preferred a special leave petition before the Hon'ble Supreme Court in Slp.C.C.No.13056 of 2014, which was dismissed by an order dated 25.08.2014. It is seen that the judgment rendered by the Division Bench has been implemented by the Government in G.O.Ms.No. (3d) No.13 School Education Department, dated 06.02.2015. The writ Court, took into consideration,

https://hcservices.courts.gov.in/hcservices of the Division Bench in the case of



Premkumari v. State of Tamil Nadu (2008 (5) MLJ 1349), while granting relief to the writ petitioners.

5. In the light of the above, we do not find any merit in the appeals filed by the State. Accordingly these appeals are dismissed. No Costs."

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9. In the case of **Government of Tamil Nadu and others vs K.Muniyandi and others** reported in **2021 SCC Online Mad 1569**, a Division Bench of this Court had dismissed a Writ Appeal preferred against the order of learned Single Judge granting incentive increments for a Teacher, who acquired higher qualification of M.Ed., degree after his appointment.

10. The learned Government Advocate relying upon the counter affidavit filed by the respondents, submitted that the petitioner agreed that she would not claim incentive increment for higher qualification and that the order sanctioned incentive increment for M.Ed degree mistakenly. The learned Government Advocate further submitted that the incentive increment paid to the petitioner was contrary to the petitioner's own undertaking and that therefore, the respondents are entitled to recover the wrong incentives received by the petitioner with effect from 27.05.1999. The learned Government Advocate also submitted that the petitioner cannot be given incentive increment, as *doctrine of promissory estoppel* is applied in the case of petitioner.

11. The learned Government Advocate also relied upon a judgment of Honourable Supreme Court in the case of **High Court of Punjab and Haryana and others vs Jagdev Singh**, reported in **(2016) 14 SCC 267**, wherein, the Honourable Supreme Court has held that the pay, that was recovered from retired employee or employees, who are due to retire within one year, the order of recovery is inapplicable, where Officer to whom a payment was made in the first instance, was clearly put on notice that in case of excess payment was found, the same would be required to be refunded.

12. Again, the learned Government Advocate relied upon a judgment of a learned Single Judge of this Court in the case of **S.K.Kannan vs Secretary of Government, School Education Department and others**, reported in **2017 SCC Online Mad 7682**, wherein, this Court has held as follows:

"6. In the above judgment, it has been categorically stated that when an undertaking is given by an employee, the employer can recover the amount. It is not necessary that there should be a separate notice intimating recovery. As rightly pointed out by the respondents, the order granting incentive increment to the employee/petitioner on 22.04.2013, is very clear that in case of audit objection, the petitioner shall pay the entire amount, which has been accepted and acknowledged by



the petitioner. Getting a separate undertaking is only a formality. When the order granting incentive increment contains such a clause, that would suffice to order recovery and that there is no need for separate hearing. Therefore, the impugned order of recovery cannot be found fault with. Hence, this Court is not inclined to grant the relief sought for. Accordingly, this writ petition is dismissed. No costs. Consequently, W.M.P(MD)Nos.1451 and 1452 of 2017 are closed."

13.This Court is unable to countenance any of the arguments of the learned Government Advocate for the simple reason that the petitioner has not even violated the terms of appointment. The petitioner's appointment was, of course, subject to a condition that she will not claim incentive increment for the higher qualification, she had at the time of her appointment. That does not mean that the petitioner never claim incentive increment even if she acquires higher qualification subsequent to her appointment.

14.After reading the orders of Government granting incentive increment, this Court understood the object behind grant of advance increments. In all the judgments of this Court referred to above, this Court has considered the object behind grant of incentive increment for possessing higher qualification. The purpose of granting incentive increment is for attracting higher qualified people or for encouraging existing teaching staff to acquire higher qualification. In view of the consistent view taken by this Court in several judgments, this Court is unable to countenance the arguments of the learned Government Advocate to deny incentive increment to the petitioner.

15.This Court is unable to consider the judgments relied upon by the learned Government Advocate, as a precedent in this case in view of the facts and peculiar circumstances noted in the said judgments.

16.Accordingly, the Writ Petition is allowed and the impugned order passed by the third respondent, dated 24.02.2015, is quashed. The third respondent is directed to continue to disburse the salary with two advance increments, which the petitioner was drawing from 1999 for acquiring M.Ed., degree in 1999. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



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

2.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

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Thuckalay-629 175,
Kanyakumari District.

4.The Secretary,
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Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-31195[F] dated 05/10/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-31279[F] dated 05/10/2021

W.P. (MD)No.6658 of 2015
04.10.2021

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