



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

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THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P (MD)No.19296 of 2016

R.Murugesan

... Petitioner

Vs.

1.The Director of Elementary Educational Officer,
Nungampakkam, Chennai.

2.The Principal,
Accountant General,
(Accounts and Entitlement)
Tamil Nadu
No.361, Annasalai,
Chennai-600 018.

3.The District Elementary Educational Officer,
Pudukkottai District, Pudukkottai.

4.The Assistant Elementary Educational Officer,
Aranthangi, Pudukkottai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.1462/A2/15 dated 19.08.2016 by the fourth respondent read along with the impugned order in Na.Ka.No.012605/E1/2015 dated 11.08.2016 passed by the first respondent and quash the same as illegal and consequently direct the respondents to release the withheld pensionary benefits of the petitioner effected from 01.10.2013 and the consequential arrears of pension to be paid to the petitioner after the revision of the petitioner's pension.

For Petitioner : Mr.M.Suresh

For R1, R3 & R4 : Mr.D.Farjana Ghoushia,
Special Government Pleader.

For R2 : Mr.P.Gunasekaran.



ORDER

The petitioner was appointed as Tamil Pandit in P.U.E. Elementary School, Kodakkaudi, Avudayarkovil, Pudukkottai District on 02.06.1978. He was promoted as Elementary School Headmaster on 22.12.1999. The petitioner completed B.Lit., in Annamalai University in the year 2001 and completed M.A., Tamil in the year 2003. On acquiring higher qualification and based on seniority, the petitioner was promoted as Middle School Headmaster on 13.06.2005. The petitioner also completed B.Ed., on 28.12.2012. The petitioner reached the age of superannuation on 30.09.2013 and was granted reemployment until the completion of the academic year i.e. 31.05.2014.

2.The petitioner applied for advance increment for passing M.A., and B.Ed., as per G.O.42 Education, dated 10.01.1969 vide letter dated 02.06.2013 and the petitioner received increments from 2013 onwards. After retirement, the third respondent by order dated 03.08.2015 revised the pension withdrawing advance increment granted for completion of M.A., B.Ed., and based on the same, the petitioner's advance increment to the tune of Rs.53,608/- was withheld. The petitioner submitted his representation, dated 05.09.2015 for granting increment. The fourth respondent forwarded the representation along with recommendation vide letter dated 07.10.2015. The second respondent has cancelled the order dated 03.08.2015 and intimated the same to the fourth respondent vide letter dated 22.12.2015. In spite of the same, the fourth respondent did not release the pension benefits to the petitioner.

3.The petitioner subsequently, submitted a representation and the second respondent vide communication dated 14.07.2016 once again intimated to the fourth respondent to make necessary arrangements for payment of pensionary benefits and the same was also informed to the petitioner vide communication dated 18.07.2016. Since the fourth respondent has not acted on the communication of the second respondent, the petitioner has come forward with the present writ petition.

4.The third respondent has filed counter stating that the petitioner was qualified as B.Lit., Tamil and has joined in service as Tamil Pandit in the year 1978. He was promoted as Primary School Headmaster on 22.12.1999. Thereafter, the petitioner completed M.A., Tamil in the year 2003. Basic qualification for promotion in the post of Middle School Headmaster is either M.A., degree or B.Ed., degree. Since the petitioner completed M.A., degree, he is eligible to be promoted as Middle School Headmaster and therefore, rightly the petitioner was promoted as Middle School Headmaster on 13.06.2005. Therefore, B.Ed., degree, which was acquired on 28.12.2012 is superfluous. Therefore, the petitioner is not entitled for incentive increment for B.Ed.



5.The petitioner approached the authorities for granting incentive increment for the qualification of M.A., and B.Ed., degree. The fourth respondent granted two additional incentive increments in favour of the petitioner vide order dated 16.07.2013. The petitioner enjoyed the incentive increments till his retirement. The second respondent made an objection for granting advanced incentive increments for B.Ed., degree. Based on the objection of the second respondent, the fourth respondent passed an order dated 19.08.2016 stopping incentive increment for B.Ed., degree. The respondents submitted that as per G.O.Ms.No.1024, dated 09.12.1993, the Government restricted the number of incentive (four increments). The said G.O. was clarified that no teacher shall be entitled for any advanced increments more than two, in their entire service. In the subsequent G.O(1D) No.18 School Education (E2) Department dated 18.01.2013, the entire issue was fully clarified and based on this GO also, the petitioner is not entitled for incentive increment for B.Ed., degree.

6.Heard the learned Counsel for the petitioner and the learned Counsel for the 2nd respondent and Special Government Pleader for the other respondents.

7.The claim of the petitioner that he is entitled to get incentive increment for B.Ed., degree cannot be accepted. As rightly pointed out by the respondent that the petitioner was already promoted as Middle School Headmaster based on M.A., Tamil degree. Therefore, B.Ed., degree is absolutely superfluous. In this particular case, the petitioner completed B.Ed., degree on 28.12.2012. But the petitioner attained superannuation on 30.09.2013. The petitioner, in order to get more pensionary benefits, has occurred B.Ed., degree at the fag end of his retirement. But the petitioner stated that he has been paid the said amount from 28.12.2012 onwards. The petitioner has also received the said amount from 03.08.2015 until now and the claim of the petitioner is that a sum of Rs.53,608/- was withheld for the period from 31.05.2014 to 03.08.2015.

8.The Government has issued a new G.O. MS. No. 37 Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 wherein the Government has taken a policy decision and the same is extracted hereunder:

i. As a policy decision, the scheme of sanction of advance increment for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled/dispensed with immediate effect.

ii. The orders issued in the Government Orders fifth to eighth read above cancelled with immediate effect.



iii. The sanction of the advance increment for passing Account Test for Sub-Ordinate Officers-Part-I, as per rulings (3) & (4) under FR 31-A be dispensed with immediate effect.

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iv. The advance increment for acquiring higher qualification already granted to Government Servants need not be effected any recovery.

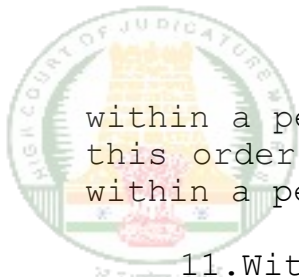
v. All the departments of Secretariat/Head of the Departments are requested to take up a review on this issue with reference to the special / adhoc rules of the posts (entry to higher level) of the department concerned and to prescribe higher qualification to the posts where ever necessarily required, so as to improve the services of the department concerned.

vi. The cases of Government Servants who have acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increment for passing higher qualification irrespective of the post held/degree acquired.

vii. No fresh/further proposals will be entertained by Personnel and Administrative Reforms Department on this issue, in future.

9. However, the Government has considered the cases, who have been granted advance increments prior to this GO and stated that if no previous orders were issued by any of the department concerned, they are not entitled for sanction of any advance increment for passing higher qualification.

10. In this case, admittedly, the previous order has been issued sanctioning incentive increment and the petitioner is receiving it from 28.12.2012 onwards. In Clause 6(vi) of the above said GO., it has been stated that any advance incentive increment already granted need not to be recovered from the concerned employees. Taking all these clauses into consideration, the first respondent shall consider the case and pass orders, in the light of G.O. (MS) No.37 dated 16.01.2013. The first respondent is directed to pass order,



within a period of eight weeks from the date of receipt of a copy of this order and the second respondent shall consider and pass orders within a period of four weeks, thereafter.

11. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

gns

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 Director of Elementary Educational Officer,
Nungampakkam, Chennai.

2. The Principal,
Accountant General,
(Accounts and Entitlement)
Tamil Nadu
No.361, Annasalai,
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4. The Assistant Elementary Educational Officer,
Aranthangi, Pudukkottai District.

+1 CC to M/s.M.SURESH, Advocate (SR-40182[F] dated 23/12/2021)

+1 CC to M/s.SPL GP (SR-40463[F] dated 27/12/2021)

W.P (MD) No.19296 of 2016

RD(28.01.2022) 5P 7C