



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.2345 of 2017

WEB COPY

V.Chandra Pushpam

... Petitioner

Vs.

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

2.Assistant Elementary Educational Officer,
T.Vadipatti,
Madurai District.

3.The President
Kamarajar Middle School,
Sholavanthan
T.Vadipatti Taluk
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of 2nd respondent in Na.Ka.No.817/2016/A2 dated 29.11.2016 and quash the same as illegal and unconstitutional consequently direct the 2nd respondent to approve 182 days leave taken by the petitioner to study B.Ed from 11.10.2011 to 04.04.2012 and grant her incentive increment for having qualified B.Ed., degree forthwith, in the light of proceedings of 1st respondent in Na.Ka.No.4115/B3/2016, dated 30.11.2016.

For Petitioner : Mr.K.Balasubramanian

For R1 & R2 : Mr.K.S.Selvaganesan
Government Advocate

For R3 : No appearance

ORDER

This Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned proceedings of the second respondent dated 29.11.2016 and direct the second respondent to approve 182 days leave taken by the petitioner to study B.Ed., from 11.10.2011 to 04.04.2012 and grant her incentive increment for having qualified B.Ed., degree, in the light of the proceedings of the first respondent dated 30.11.2016.

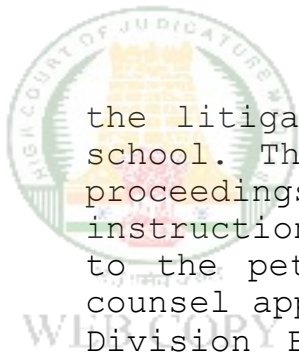


2.The brief facts that are necessary for disposal of the writ petition are as follows:

(i)The Petitioner was appointed as a Secondary Grade Teacher at Hindu Primary School, Thandavankadu, Tiruchendur Taluk, with effect from 26.07.1988. The Petitioner joined in the third respondent school on 01.08.2002 and she is working in the third respondent school. It is stated by the petitioner that on completion of 10 years of service, she was given selection grade and thereafter, given special grade with effect from 26.07.1988 and 26.07.2008 respectfully. The petitioner acquired degree in B.A (History) in the year 1994 and later completed his post graduation in M.A(History) in the year 1997. The petitioner sought permission from the third respondent to undergo B.Ed., degree course and she also availed leave from 11.10.2011 to 10.01.2012. The petitioner was granted permission and leave and hence, she was relieved for undergoing B.Ed., course in the year 2011. After getting extension of leave for studying B.Ed., the petitioner had availed 182 days of leave for completing B.Ed., course at St.Josephs College of Education, Sathankulam, Thoothukudi District.

(ii)The petitioner, on the basis of B.Ed., degree obtained by her, approached the second respondent through proper channel to regularize and approve 182 days of leave period taken by the petitioner for completing B.Ed., course. However, the second respondent rejected the petitioner's request for applying leave of 182 days stating that the third respondent school is under direct payment from 2011 and that permission ought to have been granted by the second respondent and not the third respondent. It is also stated in the order that there is a dispute with regard to the management ie., constitution of school committee and it is stated that a writ petition was pending and hence, the petitioner's request for grant of leave cannot be considered. It is true that the first respondent passed an order of direct payment with effect from July 2011. Pursuant to the direction issued by the first respondent, the second respondent has taken control over the third respondent school. The petitioner therefore, submitted a representation to the second respondent to sanction incentive increment for acquiring higher qualification of B.Ed., degree course, while in employment. The petitioner also submitted further representations. However, the respondents by impugned order, rejected her claim. Hence, the above writ petition is filed.

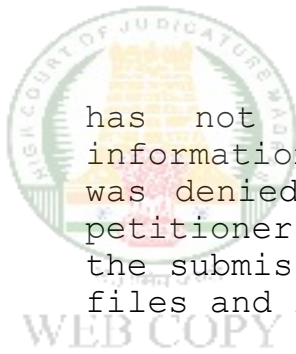
3.The learned counsel appearing for the petitioner submitted that this Court in several judgments acknowledged the entitlement of secondary grade teachers to get incentive increment for acquiring higher qualification, after joining in service. The petitioner's eligibility is now doubted by the respondent. By the impugned order, the second respondent rejected the claim of the petitioner for incentive increment on the ground that the claim of the petitioner



the litigation with regard to the appointment of Secretary to the school. The learned counsel also produced, before this Court, the proceedings of the first respondent, dated 30.11.2016, giving instructions to the second respondent to grant incentive increment to the petitioner for acquiring B.Ed., qualification. The learned counsel appearing for the petitioner relied upon the judgment of the Division Bench of this Court, in the case of **The Director of Elementary Education -vs- G.Vijayalakshmi and others**, reported in (2015)6 MLJ 315, wherein it is held that the school committee is the authority to deal with the service conditions of the staff. The Division Bench did not accept the contention of the Director of Elementary Education that permission or No Objection Certificate should be obtained from the Director of Elementary Education. Though recognized private aided institutions, perform a public duty and receive salary for the staff, from State Aid, it is held by the Division Bench of this Court that insofar as the grant of leave is concerned, it should be sanctioned only by the School Committee in exercise of its power under Section 18 of the Act. It is also clarified that merely because the petitioner therein did not obtain sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules framed therein.

4. In the present case, the eligibility of the petitioner to get incentive increment and to get leave salary for the period during which the petitioner underwent B.Ed., course, after getting permission from the Management is not disputed. Insofar as the prayer to approve the leave taken by the petitioner for studying B.Ed., course is concerned, the respondents submitted that the petitioner did not get permission for leave for her studies from the Secretary of the school and that the request of the petitioner for sanctioning incentive increment would be considered after the lapse pointed out is set right. As far as the grant of incentive increment for acquiring higher qualification is concerned, this Court had already settled the issue at rest. However, incentive increment to the petitioner was denied only by citing the order of direct payment. It is not a valid excuse. The claim for incentive increment has to be paid only by the department. With regard to the grant of leave and for salary, the respondents have stated that the issue will be considered only after the dispute regarding the management is settled. It is submitted before this Court by the learned counsel for the petitioner that there is no dispute as on date with regard to the management and that the school is now under the control of educational agency as the disputes are all settled.

5. However, the learned Government Advocate appearing for the Official Respondents submitted that respondents 1 and 2 have received some information questioning the genuineness of B.Ed., degree obtained by the petitioner. The learned Government Advocate



has not produced any material nor disclosed the source of information. The petitioner's entitlement for incentive increment was denied not on the ground that the certificate produced by the petitioner is bogus. Hence, this Court is not inclined to entertain the submission to adjourn the matter unnecessarily for production of files and records.

6. Having regard to the facts narrated and discussed above, this Court is inclined to dispose of the writ petition in the following lines:

(i) This Writ Petition is allowed and the impugned order passed by the second respondent, dated 29.11.2016 is quashed. The second respondent is directed to grant incentive increment to the petitioner for having acquired B.Ed., degree, within a period of twelve weeks from the date of receipt of a copy of this order.

(ii) However, it is open to the second respondent to hold an enquiry with regard to the genuineness of the certificates produced by the petitioner to get incentive increment. In case, if it is found that the petitioner has produced a bogus or the certificate produced by the petitioner is not genuine, this order directing the respondent to grant incentive increment can be ignored.

(iii) The second respondent is directed to approve 182 days leave taken by the petitioner to study B.Ed., course from 11.02.2010 to 04.04.2012. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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,
Madurai District,
Madurai.



2.Assistant Elementary Educational Officer,
T.Vadipatti,
Madurai District.

3.The President
Kamarajar Middle School,
Sholavanthan
T.Vadipatti Taluk
Madurai District.

+1 CC to M/s.K.BALASUBRAMANIAN, Advocate (SR-27405[F] dated
26/08/2021)

+1 CC to M/s.GP (SR-27518[F] dated 27/08/2021)

W.P. (MD) .No.2345 of 2017
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