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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NOS.15544 TO 15547 OF 2010

1. Isac Davidson
... Petitioner in W.P.No.15544 of 2010
2. C.Alice Janet
... Petitioner in W.P.No.15545 of 2010
3. C.Vijayan
... Petitioner in W.P.No.15546 of 2010
4. N.John Rose
... Petitioner in W.P.No.15547 of 2010

Vs.

1. The State of Tamil Nadu
Rep. by Secretary to Government,
Education Department,
Fort St.George,
Chennai 600 009.
..Respondents 1 and 2 in all W.Ps
2. The Director of School Education,
Chennai 600 006.
3. The District Educational Officer,
Thauckalay, Kanyakumari District.
... Respondent 3 in W.P.Nos.15544,
15545, 15547 of 2010
4. The District Educational Officer,
Nagercoil, Kanyakumari District.
... Respondent 3 in
W.P.No.15546 of 2010
5. The Head Master,
Kavimani Desiga Vinayagam Pillai,
Government Girls Higher Secondary School,
Kottar, Nagercoil-2.
... Respondent 4 in W.P.No.15546 of 2010



6. The Head Master,
Government Higher Secondary School,
Thauckalay,
Kanyakumari District.

... Respondent 4 in W.P.No.15547 of 2010

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Prayer in W.P.No.15544 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in O.Mu.No.7312/A1/09 dated 22.09.2009 passed by the third respondent quash the same and direct the respondents to grant incentive increment to the petitioner based upon acquiring of M.Phil qualification during 1997.

Prayer in W.P.No.15545 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in O.Mu.No.6961/A1/09 dated 31.08.2009 passed by the third respondent quash the same and direct the respondents to grant incentive increment to the petitioner based upon acquiring of M.Phil qualification in April 1995.

Prayer in W.P.No.15546 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in O.Mu.No.361/A1/07 dated 11.09.2007 passed by the fourth respondent quash the same and direct the respondents to grant incentive increment to the petitioner based upon acquiring of M.Phil qualification in March 2005.

Prayer in W.P.No.15547 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in O.Mu.No.110/A1/09 dated 24.08.2009 passed by the fourth respondent quash the same and direct the respondents to grant incentive increment to the petitioner based upon acquiring of M.Phil qualification in April 1996.

Appearance of the counsels in all W.Ps.

For Petitioners : M/S.V.S.Manimegalai

For R1 to R3 : Ms.E.Renganayaki
Additional Government Pleader



COMMON ORDER

Since the issue involved and the relief sought for in all these four Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. The petitioners, who were working as School Assistants have filed present Writ Petitions, challenging the impugned orders, dated 22.09.2009 and 31.08.2009, passed by third respondent in W.P.Nos.15544 & 15545 of 2010 respectively and the orders, dated 11.09.2007 and 24.08.2009, passed by the fourth respondent in W.P.Nos.15546 & 15547 of 2010 respectively, thereby, refusing to grant the petitioners third incentive increment for they having acquired the qualification of M.Phil degree.

3. When the matters came up for hearing today, the learned counsel for the petitioners submitted that the issue was originally decided on 25.02.2004 itself by the Hon'ble Division Bench of this Court, in Writ Appeal No.2307 of 1999, and after framing the question in Paragraph No.4 of the said judgment, the issue was answered in favour of the appellant/writ petitioner and the operative portion of the said judgment, viz. at Paragraph No. 6 is extracted herein under:-

"6. Similarly, after the said G.O. dated 09.12.1993, similar question came up for consideration before this Court in W.P.No.20437 of 1993. This Court, by order dated 02.03.1994, has upheld the payment of 3rd set of two advance increments to the P.G. Assistants. Likewise, entitlement of P.G. Teachers for 3rd set of two advance increments also came up for consideration before this Court in W.P.No.8078/1994 and this Court, by order dated 01.02.1995 has upheld the said order. For the above reasons, we find that the appellant is entitled to the benefit of G.O.Ms.No.747 Finance Department dated 18.08.1986 together with G.O.Ms.No.1023 Education, Science and Technology Department, dated 09.12.1993. Hence, we see no merit in the order of the 2nd respondent dated 29.11.1989 in withdrawing the 3rd set of two advance increments given to the petitioner. Accordingly, the Writ Appeal is allowed and the impugned proceedings dated 29.11.1989 and the order of the learned single judge are set aside. No costs."

4. Thereafter, once again, the matter came up for consideration before the learned Single Judge of this Court, since the benefits was not extended to many other teachers even



after the judgment of the Hon'ble Division Bench, in a batch of Writ Petitions, and the learned Single Judge vide, order dated 24.07.2013, allowed the Writ Petitions. It is useful to extract Paragraph Nos.14, 15 and 20 of the said Judgment, whereby, the learned Single Judge had not only reiterated that teachers are entitled for the third incentive, but had also held that, since the judgments are in the nature of judgment in rem, the teachers should not have been forced to repeatedly approach this Court, and the respondents themselves ought to have granted the benefits to all the similarly situated persons. Para Nos.14, 15 and 20 of the said order is extracted hereinbelow:-

"14. Perusal of the Government Order in G.O.(2D). No.15, School Education Department, dated 28.03.2013 shows that the Government, accepting the order made in W.P.(MD).No.9200 of 2011, dated 12.04.2011, have sanctioned the third incentive increment to Mrs.K.Latha Devi, a Post Graduate Assistant, from the date on which she acquired the higher qualification. This Order has been issued with the concurrence of the Finance Department in A.SA.No.8499/Education-11/13, dated 28.02.2013. Thus, from the line of judgments stated supra, the issue as to whether teachers are entitled to third incentive increment for acquiring higher qualification, is no longer res integra.

15. When the Government have implemented the orders of this Court, declaring entitlement of a teacher to third incentive increment for acquiring higher educational qualification and also issued appropriate orders, directing sanction of advance increments from the date of acquiring higher educational qualification, it is the duty on the part of the District Educational Officer, Madurai Educational District, Tallakulam, Madurai, to have addressed the issue, as to whether the petitioners who are all M.Phil degree holders, are entitled to the sanction of the third incentive increment on the merits of the individual case, and pass orders. Merely because, G.O.(1D).No.209, School Education Department, dated 08.07.2010 was issued by way of implementation of orders made in W.A.No.426 of 2008, dated 27.06.2008, the District Educational Officer, Madurai District ought not to have returned the proposals dated 22.09.2010, sent by the Correspondent, Sourashtra Higher Secondary School, Madurai District. A duty is case upon the said authority, to address the entitlement of the petitioners, for third incentive increment for M.Phil degree.



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20. Before parting with this case, this Court deems it fit to record, that once an issue has been finally decided by this Court and the decision rendered by this Court has been implemented by the Government in passing several G.Os, it is incumbent on the part of the authorities, to apply the judgment, to the similarly placed persons, whenever a similar claim is made, subject to verification of the service particulars of the claimant and address the issue of entitlement. This of course to the rules and government rules, issues from time to time. An issue which reached finality, has to be treated as "judgment in rem". It cannot be contended by the respondent as it is "judgment in personam"

5. In that view of the matter, the learned counsel for the petitioners prays for all the Writ Petitions be allowed, as prayed for.

6. The learned Additional Government Pleader appearing for the respondents even though has filed a counter affidavit, in W.P.No.15546 of 2010, stating that, the petitioner is not eligible for the third incentive, however, upon query by this Court, is not in a position to dispute the earlier pronouncements of this Court, as relied on by the petitioners.

7. In the light of the above, this Court is of the view that the petitioners are entitled to succeed. Accordingly, the Writ Petitions are allowed, the orders impugned herein, dated 22.09.2009, 31.08.2009, 11.09.2007 and 24.08.2009 are quashed and the respondents are directed to settle all the consequential arrears, however, without any interest. The respondents shall pay the amounts due to the petitioners within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jd/sd



To

1. The State of Tamil Nadu
Rep. by Secretary to Government,
Education Department,
Fort St.George,
Chennai 600 009.
2. The Director of School Education,
Chennai 600 006.
3. The District Educational Officer,
Thauckalay, Kanyakumari District.
4. The District Educational Officer,
Nagercoil, Kanyakumari District.
5. The Head Master,
Kavimani Desiga Vinayagam Pillai,
Government Girls Higher Secondary School,
Kottar, Nagercoil-2.
6. The Head Master,
Government Higher Secondary School,
Thauckalay,
Kanyakumari District.

+1cc to the Government Pleader, S.R.No.17417

W.P.Nos.15544 to 15547 of 2010

AD(CO)
RLP(01/04/2022)