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W.P. No.458 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.458 of 2018

Dr.P.Chandrasekaran

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. By its Secretary, Public Works Department,
Fort St. George, Chennai – 9.

2.The Chief Engineer (PWD),
State Surface and Ground Water Data Centre,
Tharamani, Chennai – 113.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent relating to the impugned letter, namely Letter of the 2nd respondent Memo.No.E1(2)/6042/2017 dated 14.03.2017 and quash the same and consequently to direct the respondents to grant three increments for acquiring Ph.D. Degree with effect from 03.08.2016, the date of acquiring the Ph.D. Degree and pay arrears of pay therefor.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.U.M.Ravichandran
Special Government Pleader



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ORDER

WEB COPY The prayer sought for herein is for a writ of certiorarified mandamus

calling for the records on the file of the 2nd respondent relating to the impugned letter, namely Letter of the 2nd respondent Memo.No.E1(2)/6042/2017 dated 14.03.2017 and quash the same and consequently to direct the respondents to grant three increments for acquiring Ph.D. Degree with effect from 03.08.2016, the date of acquiring the Ph.D. Degree and pay arrears of pay therefor.

2. The petitioner is working as Assistant Director in the Ground Water wing of Public Works Department under the 2nd respondent. He already possessed M.Sc. Degree in Geology at the time of joining the service as Assistant Geologist. While he was working as Assistant Geologist with due permission from the 2nd respondent, he acquired the Ph.D. degree i.e., Doctor of Philosophy in the subjects relating to the Ground Water viz., Hydrogeological Studies of Thuringalar River Basin- An Integrated approach for Sustainable Ground Water Management using Remote Sensing and GIS (Geographical Information Systems) Techniques, Tamil Nadu, India (Geology-Geography) (inter-disciplinary on 03.08.2016 and the certificate was issued on 15.07.2017 at the own cost of the



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petitioner.

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3. After acquiring the qualification, the petitioner sought for advance incentive increment for such higher qualification of Ph.D. acquired by the petitioner. However, the said request having been considered was turned out by the orders of the 2nd respondent dated 14.03.2017, where by stating the following reason the plea of the petitioner was rejected by the 2nd respondent.

“பார்வை 1-ல் காணும் தங்களது விண்ணப்பத்தில் Ph.D. Degree முதுகலை / முனைவர் பட்டப்படிப்பு படித்ததற்கு சிறப்பு ஊதியம் வழங்குமாறு கோரி விண்ணப்பம் சமர்ப்பிக்கப்பட்டுள்ளது.

பார்வை 2 மற்றும் 3-ல் காணும் அரசு கடிதங்களின் படி, அரசாணை நிலை எண்.234/நிதி ஊதியக்குழு/2009-1/நாள்.01.06.2009-ல் முதுகலை/ முனைவர் பட்டப்படிப்பினை தேர்ச்சி பெற்றதற்கான இரண்டு/மூன்று ஊதிய உயர்வுகள் வழங்க வழிவகை செய்யப்படவில்லை என தெளிவுரை வழங்கப்பட்டுள்ளது என்ற விவரம் தெரிவத்துக்கொள்ளப்படுகிறது.

செ.தினகரன்

தலைமைப் பொறியாளர், நீ.ஆ.து., பொபது.

மா.நி.ம.மே.நீ.ஆ.வி.கு.மை.

Challenging the said order, the present writ petition has been filed.



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4. Heard Mr.N.Subramaniyan, learned counsel appearing for the petitioner who would submit that, the issue raised in this writ petition is no more *res integra* as atleast two decisions have come as to the eligibility of the petitioner to get advance incentive increment for having acquired the higher qualification of Ph.D. in the subject Geology.

5. In support of his contention, he has relied upon G.O.(Ms).No.97 Personnel and Administrative Reforms (F.R.II) Department dated 21.11.1984, Government Letter dated 19.03.2014 and 15.04.2014 of the Public Works Department, the Government Clarification issued dated 26.06.2009 and the orders passed by this Court in W.P.No.39313 of 2016 dated 23.11.2016 in the matter of Dr.V.Singaravelu Vs. The Government of Tamil Nadu represented by the Principal Secretary to Government, Public Works Department and others as well as the decision made in W.P.No.33440 of 2015 dated 30.01.2017 in the matter of R.Senthil Kumar Vs. The Government of Tamil Nadu represented by its Secretary, Public Works Department and others.



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6. By citing these Government Orders, clarification as well as the decision of the learned Judges referred to above of this Court, the learned counsel would contend that, the decision has been clarified by the Government in the clarification dated 26.06.2009. Therefore, the view taken in the present case of the petitioner as per the impugned order by citing the Government Letter dated 19.03.2014 and 15.04.2014 since have already been considered by this Court where those have been set aside or quashed by the orders of this Court referred to above, therefore the very same reason now cited through the impugned order rejecting the plea of the petitioner for granting advance incentive increment is infirm, hence the learned counsel seeks indulgence of this Court against the impugned order.

7. Per contra Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents would contend that, insofar as the higher qualification acquired by the petitioner is concerned, it is the higher qualification of Ph.D. only in Geology subject which would be no way helpful to the Public Works Department where if any higher qualification is acquired by the Engineering Division people in the discipline of Engineering only for those additional qualification acquired by the



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Engineers who are working in the Public Works Department such kind of incentives were given.

8. This has been clarified by the Government through letter dated 19.03.2014 and 15.04.2014 and when there is a specific clarification stating that, other than the Engineers who are working in the Department like the Geology i.e., the petitioner like candidates who acquired any higher qualification like P.G. qualification or Ph.D., that would not entitle him to seek for additional incentive increment and in view of the said clarification specifically made in this regard by the Government letter referred to above citing the same only the present impugned order was passed by the respondents rejecting the plea of the petitioner for granting advance increment incentives for having acquired the higher qualification of Ph.D. in Geology and not in the Engineering discipline, therefore that view taken by the respondents is to be sustained and hence the impugned order also is to be sustained, he contended.

9. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



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10. Before 05.09.1983 the system or scheme of advance incentive increment was in vogue for those who acquired higher qualification in the Government employees service conditions at the State Government.

11. However, on 05.09.1983 a new system was introduced by G.O.(Ms).No.843 Personal and Administrative Reforms Department, under which, instead of giving the advance incentive increment to those who acquired higher qualification, an one time lump sum payment would be made and after receipt of the lump sum payment, the person who acquired higher qualification must be satisfied with the same and they cannot seek for any advance incentive increment as the said system was done away by the said G.O.(Ms)No.843 dated 05.09.1983.

12. Experiencing the difficulty, the Government servants seems to have made request to the Government to revive the erstwhile scheme i.e. instead of the bulk amount being paid to the person who acquired the higher qualification, the Government considering the said plea has come forward to issue Government Order in G.O.(Ms).No.1159 dated 21.11.1984 which reads thus:

“In the Government Order 4th read above, the scheme of sanction of advance increments for acquisition of higher



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qualification was replaced by the scheme of sanction of lump sum grant. The orders took effect from 5.9.1983. Departments of Secretariat were requested to determine the quantum of lump sum grant in lieu of advance increments in consultation with Personnel and Administrative Reforms and Finance Departments.

2. Several representations have been received requesting that the advance incrementing scheme may be continued. Government has carefully examined the request and have decided to revive the scheme of sanction of advance increments. Accordingly the Government direct that the scheme of sanction of advance increments for acquisition of higher qualification in vogue prior to 5.9.1983 be revived with immediate effect. The orders issued in the Government Order fourth read above and the clarifications issued there under from time to time be cancelled subject to the modification specified in para 3 below:

3. Such of the Officers who have already availed themselves of the lump sum grant under G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.II) Department dated 5.9.1983 are permitted to retain the benefit. However, if a person who has already drawn the lump sum grant wishes to avail himself of the scheme of sanction of advance increment, he shall refund the lump sum grant in one installment and then apply to the concerned authority for sanction of advance increment.

4. These orders will apply to Government servants including teachers.”

13. Therefore, the advance increment scheme was again restored with effect from the G.O.(Ms).No.1159 dated 21.11.1984 and an option was also given that pursuant to G.O.(Ms).No.843 referred to above, those



who received the one time lump sum amount can return back the same and can seek for switchover to the advance incentive increment scheme.

14. That system was continued till the VI Pay Commission Recommendation and after VI Pay Commission Recommendation, since there was a doubt arisen in the minds of the Department Heads, they sought for a clarification from the Finance Department as to whether the advance incentive increment scheme hitherto followed prior to VI Pay Commission Recommendation is still existing and to be continued or not. Such a clarification among other things was clarified by the Government through the letter No.34124 dated 26.06.2009 by the Finance Department which reads thus:

S.No.	Clarifications sought for	Clarifications issued
5	It is stated that in the pre-revised pay scales certain categories of employees were enjoying higher start of pay/incentive/advance increment, etc. by virtue of acquiring higher qualification/passing of departmental tests. It is presumed that the above scheme may be continued in the revised structure by awarding increments as per the quantum prescribed	Presumption is confirmed. However, such higher start/incentive increments/advance increments sanctioned in the pre-revised pay scales and taken into account while fixing the pay in the revised pay scales, shall not be granted again in the revised pay scales.

15. Therefore, the position thus has been clarified by the



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Government that the advance incentive increment scheme is continued even after the VI Pay Commission implementation.

16. Only in this context it is to be noted that the Government issued a G.O. already in the year 1984 in G.O.(Ms)No.1470 Personnel and Administrative Reforms Department dated 23.07.1984, under which, such kind of advance incentive increments were made available to those Engineers working in the Public Works Department who acquiring higher qualification like P.G./Ph.D.

17. Only citing the said Government Order, the Secretary to Government, Public Works Department by letter dated 19.03.2014 has given the following clarification.

“3. I am, therefore, directed to clarify that the orders issued in G.O.(Ms)No.1470, Public Works Department, dated 23.07.1984 for grant of advance increments to the Engineers in Public Works Department for acquisition of PG/Ph.d., qualification, cannot be made applicable to the cases in the Tamil Nadu Revised Scales of Pay Rules, 2009/

4. I am directed to return herewith the original Ph.d.,



certificate and one bound volume of the Service Register of the individual and to request you to acknowledge its receipt, early.”

18. Only this clarification triggered the 2nd respondent herein to reject the plea of the petitioner for sanctioning the advance incentive increment for acquiring the higher qualification Ph.D. by the petitioner, that is the reason why the said reason has been given and that the Government clarified through the letter dated 19.03.2014 and 15.04.2014. In these two letters, since the scheme of advance incentive increment being made applicable to the Engineers G.O.(Ms)No.1470 dated 23.07.1984 would not be made applicable to those who are other than the Engineers like the petitioner i.e., Geologist who acquired the higher qualification in the same Department i.e. P.W.D.

19. In this context, the controversy with regard to the aforesaid by citing two Government letters, has already been arisen which in fact has been concluded by two decisions of this Court. In one decision i.e., 23.11.2016 a similar officer, whose plea also for advance incentive increment was rejected by citing the said clarification, had approached this



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Court by filing writ petition in W.P.No.39313 of 2016 i.e.

Dr.V.Singaravelu cited supra, where a learned Judge of this Court, having considered the clarification issued by the Government by clarification dated 26.06.2009 and the relevant portion of which has already been quoted herein above, has passed the following order:

“4. When the matter is taken up for consideration, learned counsel for the petitioner contended that without considering the Clarification letter dated 26.06.2009 issued by the Government, the impugned order is passed. Hence, he sought for quashing the impugned order.

5. For better appreciation of the case, Clause 5 of the Clarification Letter dated 26.06.2009 vide No.34124/(Pay Cell)/2009-1, is extracted hereunder:

S. No.	Clarifications sought for	Clarifications issued
5	It is stated that in the pre-revised pay scales certain categories of employees were enjoying higher start of pay/incentive/advance increment, etc. by virtue of acquiring higher qualification/passing of departmental tests. It is presumed that the above scheme may be continued in the revised structure by awarding increments as per	Presumption is confirmed. However, such higher start/incentive increments/advance increments sanctioned in the pre-revised pay scales and taken into account while fixing the pay in the revised pay scales, shall not be granted again in the revised pay scales.



S. No.	Clarifications sought for	Clarifications issued
	the quantum prescribed	

6. In view of the above clarification, the impugned Letter dated 26.05.2015 issued by the 1st respondent is quashed and the matter is remitted to the 1st respondent for fresh consideration. The 1st respondent is directed to consider the case of the petitioner in the light of the Clarification Letter dated 26.06.2009, and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.33647 of 2016 is closed.”

20. Similar view was taken by another learned Judge in W.P.No.33440 of 2015 by order dated 30.01.2017 in the matter of Senthil Kumar cited supra, where, a learned Judge has held as follows:

“7.This Court anxiously considered and also carefully scrutinized the entire averments made.

8.As per G.O.Ms.1159, P & AR Department of the fourth respondent dated 21.11.1984, payment of advance increment for acquiring higher qualification was revived and it is applicable to all the Government servants including the teachers. Subsequently, Finance Department through its



clarification letter dated 26.11.2009, has clarified that every such higher start/incentive increments/advance increments sanctioned in the pre-revised pay scales and taken into account while fixing the pay in the revised pay scales, shall not be granted again in the revised pay scales and the same has been reiterated in G.O.Ms.97 dated 05.07.2010 and in the light of the order of this Court in W.P.No.39313 of 2016 dated 23.11.2016, G.O.Ms.1159, P & AR dated 21.11.1984 is amended and as per the said amendment, the scheme of sanction upto inclusive of II level officers below the Heads of Departments.

9.It is not in serious dispute that the petitioner is in service of the first respondent Department and he is also a Government servant and the above cited Government order as well as clarification letter, do not distinguish the Government servant and however, the first respondent took a stand that the benefit of advance increment for acquiring higher qualification is applicable only to the Assistant Engineers, Assistant Executive Engineers and Executive Engineers working in Public Works Department, in the considered opinion of this Court, the stand taken by the first respondent in the counter affidavit is wholly untenable.

10.A perusal of the Service rules relating to Tamil Nadu Boilers Service would also indicate that the method of appointment is by promotion and also by recruitment or transfer by any other service or high way service



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clarification is amended possession of mechanical degree.

11. Admittedly, the petitioner at the time of joining the service had possessed higher qualification in the form of Mechanical Engineering. In the light of the said fact also, the impugned order is per se unsustainable. Apart from the above, that the Department passing of the order of recovery is concerned, the petitioner is not at all put on notice.

12. Therefore, the writ petition is partly allowed and the impugned order of the first respondent dated 19.03.2014 is hereby set aside. The matter is remanded back to the third respondent, who in turn shall take into consideration the letter of the Finance Department bearing Clarification letter No.34124/(Pay Cell)/2009-1, dated 26.06.2009 as well as the G.O.Ms.97 dated 05.07.2010 and pass appropriate orders on merits in accordance with law, as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of the order and communicate the decision taken to the petitioner. Consequently, connected Miscellaneous Petitions are closed. No costs."

21. Therefore what is the argument advanced by the learned Special Government Pleader herein and the reason cited by the respondents i.e., the 2nd respondent in the impugned order by citing the two Government letter dated 19.03.2014 and 15.04.2014 has already been considered by



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the learned Judges in the said decisions and have concluded that the petitioners therein would be entitled to get the advance incentive increment based on the Government Order in G.O.(Ms)No.1159 dated 21.11.1984 followed by the clarification made by the Government dated 26.06.2009. Therefore the exclusion of these persons other than the Engineers from the purview of the Scheme of advance incentive increment would be an unlawful one and treating equal or unequal, therefore it is violative of Article 14 of the Constitution also.

22. In view of the said decisions made by the learned Judges as referred to above in the said cases and by taking into account of the relevant Government Orders viz., G.O.(Ms)No.1159 P & AR dated 21.11.1984 as well as the clarification issued by the Finance Department for implementing the VI Pay Scales Recommendation by clarification dated 26.06.2009 as well as two decisions referred to above, this Court has no hesitation to hold that the instructions issued by the Government or clarification made in this regard by the Secretary to Government, P.W.D. Department dated 19.03.2014 and 15.04.2014 would not override the legal position, under which, several such advance incentive increments have



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been given to various people and the G.O. referred to above by the Government in the clarification letter dated 19.03.2014 vide G.O.(Ms) No.1473 P & AR Department dated 23.07.1984 is enabling the Government to announce and extend the benefit with advance incentive increments to the persons like the petitioner and that right flows from the G.O. referred to above as well as the clarification given by the Government. Hence this Court has no hesitation to hold that the petitioner is entitled to succeed in this writ petition.

23. In the result, the impugned order is set aside and there shall be a direction to the respondents especially the 2nd respondent to pass necessary orders extending the advance incentive increments to the petitioner for his acquiring the higher qualification of Ph.D. from the date of his acquiring the qualification and such amount shall be calculated and arrears shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

24. With these directions, this Writ Petition is disposed of. No costs.



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Index : Yes / No

Speaking Order : Yes / No

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R.SURESH KUMAR, J.

Sgl

To

- 1.The Secretary,
The Government of Tamilnadu,
Public Works Department,
Fort St. George, Chennai – 9.
- 2.The Chief Engineer (PWD),
State Surface and Ground Water Data Centre,
Tharamani, Chennai – 113.

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