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Order dated : 29.06.2022
Writ Petition No.18941 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.18941 of 2014
and
M.P.Nos.1, 2, 3 and 4 of 2014

M.Senthamarai Kannan
S/o.K.Madhavan

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by
Secretary to Government,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
DPI Complex,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Chief Educational Office,
Manjakuppam, Cuddalore District.

4.The Headmaster,
Government Higher Secondary School,
Samiyarpettai, Chidambaram Taluk,
Cuddalore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records



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relating to the letter dated 17.07.2013 having Ref.No.Letter (Ms) No.129, School Education (Pa.Ka.5(2)) 2013-1 of the first respondent and the consequential order of the fourth respondent dated 28.03.2014 having Ref.No.Na.Ka.No.285/2014 dated 09.07.2014 having Ref.No.Na.Ka.No.09/2014 and quash the same and consequently, direct the fourth respondent to continue to give incentive for the petitioner from the date of the petitioner acquiring M.Phil degree on 29.09.2008.

For Petitioner : Mrs.Nalini Chidambaram, Senior Counsel
for Ms.C.Uma,

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

This writ petition has been instituted questioning the validity of the Ref.No.Letter (Ms) No.129, School Education (Pa.Ka.5(2)) 201-1 of the first respondent and the consequential order of the fourth respondent dated 28.03.2014 having Ref.No.Na.Ka.No.285/2014 dated 09.07.2014 having Ref.No.Na.Ka.No.09/2014 and consequently, direct the fourth respondent to continue to give incentive for the petitioner from the date of the petitioner acquiring M.Phil degree on 29.09.2008.

2. The petitioner was appointed as Junior BT Assistant on consolidated



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pay and thereafter, the services of the petitioner was regularised in the time scale of pay in the cadre of BT Assistant. Accordingly, the pay of the petitioner was revised. The petitioner was promoted to the post of PG Assistant and he possessed M.Phil degree during the relevant point of time. The Government issued G.O.Ms.No.18, School Education, dated 18.01.2013, extending the benefit of incentive increment for acquiring qualification of M.Phil. Thus, the petitioner submitted an application to sanction incentive increment for her M.Phil qualification. Based on the application submitted by the petitioner, the Headmaster of the School sanctioned incentive increment from the date of passing of the M.Phil degree and the said order passed by the Headmaster granting benefit from the date of passing of the M.Phil degree was objected by the audit personnel. Based on the audit objection, the order of the Headmaster was revised on the ground that the petitioner would be eligible to get incentive increment from the date of the Government order issued in G.O.Ms.No.18, School Education, dated 18.01.2013 and consequently, the excess amount paid by way of incentive increment was sought to be recovered.

3. Learned Senior Counsel appearing for the petitioner mainly contended



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that G.O.Ms.No.18, School Education, dated 18.01.2013 was issued in order to add qualification of M.Phil degree in the place of M.Ed and therefore, it is construed as benefit granted even prior to passing of G.O.Ms.No.18, School Education, dated 18.01.2013 and thus, the incentive increment sanctioned to the petitioner from the date of possessing the degree is valid and is in consonance with the Government order passed. Thus, the consequential orders passed by the respondents, which are all impugned in this writ petition, are liable to be set aside.

4. Learned Additional Government Pleader appearing on behalf of the respondents opposed the contention by stating that M.Phil degree was incorporated for the first time in G.O.Ms.No.18, School Education, dated 18.01.2013 and prior to issuance of G.O.Ms.No.18, School Education, dated 18.01.2013, M.Phil qualification was not an eligible qualification for grant of incentive increment. Thus, the Government took policy decision to grant incentive increment only from the date of issuance of G.O.Ms.No.18, School Education, dated 18.01.2013 and therefore, the Headmaster, at the instance of the petitioner, had wrongly sanctioned the incentive increment from the date of passing of M.Phil degree, which is otherwise not contemplated in the



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Government order.

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5. Considering the arguments advanced by learned Senior Counsel appearing for the petitioner and learned Additional Government Pleader, this Court is of the opinion that incentive increment is granted to the teachers for the purpose of encouraging them to acquire more educational qualification, which would be beneficial to the students as additional qualification would be helpful for imparting better education. In order to encourage the teachers, the Government implemented the scheme of incentive increment by way of concession. The teachers are eligible to get two incentive increments in their entire service as per the scheme of incentive increment.

6. In the present case, admittedly, the petitioner possess the qualification of M.Phil degree and on such acquisition, he made a representation to the Headmaster of the Government Higher Secondary School, who had wrongly sanctioned incentive increment from the date of passing of degree by misinterpreting the Government order issued in G.O.Ms.No.18, School Education, dated 18.01.2013. The incentive increment was sanctioned in favour of the petitioner from 30.09.2008 from the date of passing of the decree based



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on the representation submitted by the petitioner for sanction of incentive increment.

7. All such Government orders issued granting incentive increments are to be implemented from the date of passing of the order prospectively. If at all, the Government intended to grant extending the benefit with retrospective effect, the date of implementation must be specifically stated in the Government order. In the absence of any such mentioning in the Government orders, the Government orders granting such financial benefits have to be implemented prospectively. In the present case, at the request of the petitioner, the Headmaster, Government Higher Secondary School, Samiyarpettai, Chidambaram Taluk, sanctioned incentive increment in favour of the petitioner from the date of passing of the M.Phil degree, which was found to be erroneous by the audit personnel.

8. The incentive increment was sanctioned based on the representation made by the petitioner specifically to sanction incentive increment from the date of passing of M.Phil degree. The Headmaster erroneously interpreted the Government order and sanctioned the same. Subsequently, audit objection was



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raised by the Regional Accounts Officer, Coimbatore, on the ground that incentive increment is to be granted prospectively from the date of issuance of G.O.Ms.No.18, School Education, dated 18.01.2013.

9. This being the factum, this Court is of the considered opinion that the financial benefit extended beyond the scope of the Government order is to be construed as unjust grant. The petitioner is now working as PG Assistant and therefore, there is no impediment in recovering the excess amount already paid, more so, sanctioned based on the representation submitted by the petitioner. However, the petitioner is entitled for incentive increment for acquiring M.Phil degree from the date of Government order issued in G.O.Ms.No.18, School Education, dated 18.01.2013.

10. In view of the fact that the excess amount is yet to be recovered and the writ petition is pending for the past about eight years, the respondents are directed to commence recovery of excess payment from July'2022 onwards.

S.M.SUBRAMANIAM., J



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In the result, this Writ Petition stands dismissed. No costs. Consequently,
connected miscellaneous petitions are closed.

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Index : Yes / No

Speaking / Non Speaking order

gm

To

- 1.The Secretary to Government,
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
DPI Complex,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
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