



W.P.No.26681 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.26681 of 2021

K.R.Namasivayan

... Petitioner

Vs

1.The Principal Secretary to Government,
Education Department,
Secretariat, St. George Fort,
Chennai - 600 009.

2.The Commissioner/Director,
Secondary Education Department,
Nungambakkam, Chennai - 600 006.

3.The Joint Director,
Secondary Education Department,
Nungambakkam, Chennai - 600 006.

4.The Chief Educational Officer,
Villupuram District.

5.The District Educational Officer,
Tindivanam District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records passed by the fourth respondent in Na.Ka.No.6275/A2/2021 dated



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29.10.2021 and quash the same and direct the second respondent to issue an order to the fifth respondent to grant the third incentive as per G.O. 220 dated 27.10.2017.

For Petitioner ... Mr.T.Karunakaran

For Respondents ... Mr.S.Yashwanth
Additional Government Pleader

ORDER

The only issue that arises for consideration in this writ petition is that whether the petitioner is entitled for third incentive increment based on his M.Ed qualification.

2. Heard Mr.T.Karunakaran, learned counsel for the petitioner and Mr.S.Yashwanth, learned Additional Government Pleader appearing for the respondents.

3. The fourth respondent has rejected the petitioner's representation dated 16.09.2021 seeking for third incentive increment under the impugned order dated 29.10.2021, even though an observation has been made in the said order that the petitioner is entitled for third incentive increment. The reason for rejection has not been stated in the impugned order.



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4. The petitioner is a Tamil Pandit. He relies upon G.O.Ms.No.220 dated 27.10.2017 issued by the School Education (SE5(2)) Department for the purpose of claiming the third incentive increment.

5. The respondents contend that in view of the fact that G.O. Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 supersedes G.O.Ms.No.220, School Education (SE5(2)) Department dated 27.10.2017 and therefore, the petitioner is not entitled for third incentive increment. The respondents also contend that as per G.O.Ms.No. 37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020, an employee can claim only two incentive increments and not more than that. The respondents relied upon a Full Bench decision of this Court dated 29.04.2022 passed in W.A.No.3674 of 2019, which according to them, has categorically held that an employee is not entitled for more than two incentive increments.

6. However, learned counsel for the petitioner would submit that in special circumstances, an employee can get more than two incentive increments, even as per the aforesaid Full Bench decision. According to



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him, G.O.Ms.No.220 dated 27.10.2017 has been issued by the School Education Department to benefit the Tamil Pandits, whereas G.O.Ms.No.37 dated 10.03.2020 which the respondents relied upon, has been issued by Personnel and Administrative Reforms (FR-IV) Department and therefore, it does not supersede G.O.Ms.No.220 dated 27.10.2017. Therefore, he would submit that erroneously by total non application of mind, the fourth respondent has rejected the petitioner's claim without assigning any reason, even though he has observed that the petitioner is entitled for third incentive increment.

7. Admittedly, G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 does not refer to G.O.Ms.No.220 dated 27.10.2017 relied upon by the petitioner for grant of third incentive increment. G.O.Ms.No.37 dated 10.03.2020 refers to various Government Orders which are ten in number, but nowhere G.O.Ms.No.220 dated 27.10.2017 which the petitioner relied upon is mentioned. Though the respondents may contend that G.O.Ms.No.220 dated 27.10.2017 has been superseded by G.O.Ms.No.37 dated 10.03.2020, this Court cannot accept



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the said contention in view of the fact that G.O.Ms.No.37 dated 10.03.2020 has been issued by Personnel and Administrative Reforms (FR-IV) Department, whereas G.O.Ms.No.220 dated 27.10.2017 has been issued by the School Education (S.E. 5(2)) Department and further, there is no reference to G.O.Ms.No.220 dated 27.10.2017.

8. Though in G.O.Ms.No.37 dated 10.03.2020, there is an observation that similar orders were issued by various other departments for sanctioning advance increments to certain category of staff of those departments for acquiring post graduate/Ph.D degrees in the respective subjects, admittedly, no similar order as that of G.O.Ms.No.37 dated 10.03.2020, has been passed by School Education Department subsequent to the passing of the G.O.Ms.No.220 dated 27.10.2017 by the School Education Department. Therefore, the said observation will not aid the respondents in denying the petitioner's claim for third incentive increment.

9. The Full Bench decision of this Court dated 29.04.2022 relied upon by the learned Additional Government Pleader will also not aid the



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case of the respondents in view of the fact that the Full Bench of this Court in the operative portion of its order has observed that under special circumstances, the Government Orders may have been passed enabling an employee to get more than two incentive increments. G.O.Ms.No.220 dated 27.10.2017 relied upon by the petitioner is exclusively meant for Tamil Pandits and as per the said G.O., the third incentive increment is payable on completion of M.Ed degree on or before 09.12.1993 which has to be necessarily considered as a special circumstance.

10. Admittedly, the petitioner has also completed M.Ed degree before 09.12.1993. Being a special circumstance, that too, when G.O.Ms.No.37 dated 10.03.2020 has not superseded G.O.Ms.No.220 dated 27.10.2017, as seen from the G.O.Ms.No.37 dated 10.03.2020, necessarily the third incentive increment sought for by the petitioner ought to have been granted by the fourth respondent. But the fourth respondent, though observed that the petitioner is entitled for third incentive increment, has erroneously rejected the same without assigning any reason.



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11. For the foregoing reasons, this Court is of the considered view that the impugned order dated 29.10.2021 passed by the fourth respondent has to be quashed and the writ petition will have to be allowed.

12. Accordingly, the impugned order dated 29.10.2021 issued by the fourth respondent is hereby quashed and the fourth respondent is directed to pay the third incentive increment to the petitioner based on his M.Ed qualification obtained prior to 09.12.1993, within a period of eight weeks from the date of receipt of a copy of this Order.

13. With the aforesaid direction, this writ petition is allowed. No costs.

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Index: Yes/ No
Speaking Order/Non-speaking Order



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ABDUL QUDDHOSE, J.

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