



W.P.No.32594 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32594 of 2017
and
W.M.P.No.35919 of 2017

S.Thilagavathi

...Petitioner

Vs.

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

2.The Assistant Elementary Educational Officer,
Thiruporur Union,
Kancheepuram District.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd Respondent in Na.Ka.No.1078/A1/2017 dated 24.11.2017 and to quash the same in so far as the petitioner is concerned and consequently directing the Respondents to continue to pay the incentive increment payable to the petitioner for acquiring B.Ed., degree in compliance to the Government orders.



W.P.No.32594 of 2017

For Petitioner : Mr.G.Sankaran

For R1 & R2 : Mrs.S.Mythreyechandru
Special Government Pleader

WEB COPY

ORDER

The relief sought for in the present writ petition is to call for the records relating to the impugned proceedings issued by the 2nd Respondent in Na.Ka.No.1078/A1/2017 dated 24.11.2017 and to quash the same in so far as the petitioner is concerned and consequently to direct the Respondents to continue to pay the incentive increment payable to the petitioner for acquiring B.Ed., degree in compliance to the Government orders.

2. The petitioner was initially appointed as Secondary Grade Teacher. She was promoted as Primary School Headmaster in the year 2005. She acquired B.Lit., degree and therefore, she was promoted to the post of Tamil Pandit in the year 2008. Subsequently, the petitioner was further promoted to the post of Middle School Headmaster on 02.08.2010. She has completed B.Ed., degree in June 2012 and incentive increment was granted for acquiring B.Ed., degree as per G.O.Ms.No.107, Education Department dated 20.01.1976.



W.P.No.32594 of 2017

WEB COPY

3. The petitioner states that the Secondary Grade Teacher on acquiring the B.Lit., degree qualification is eligible for promotion to the post of Tamil Pandit/BT Assistant (Tamil) as well as for Middle School Headmaster. Whenever the B.Ed., degree is acquired, it is considered as an additional qualification for grant of incentive increment. Thus, based on G.O.Ms.No.107, Education Department dated 20.01.1976, incentive increment was granted and the said incentive increment granted in favour of the writ petitioner was cancelled through the impugned order and the excess amount received was directed to be repaid.

4. The petitioner states that the incentive increment for B.Ed., degree was granted in accordance with the G.O.Ms.No.107, Education Department dated 20.01.1976 and therefore, there is no irregularity.

5. However, the issues with reference to the grant of incentive increment for B.Ed., degree based on G.O.Ms.No.107, Education Department dated 20.01.1976 was elaborately considered by this Court in a batch of writ petitions in W.P.(MD).No.6837 of 2018 & etc., dated



W.P.No.32594 of 2017

02.06.2022 and the relevant portion of the judgment are extracted

WEB COPY hereunder:

“6. The Government has issued G.O.Ms.No.1297 Education Department dated 21.01.1979, wherein the B.Lit., qualified teachers were included in the feeder category for considering the promotion as B.T. Middle School Headmaster by taking into account B.Lit., Tamil qualification. Earlier to this G.O. B.Ed., qualification is one of the required qualification for promotion as Middle School Headmaster. Which means the B.Lit., B.T. and B.Ed., qualification are considered on par and they are considered as equal qualification. Hence when the teacher is having B.Lit., qualification, then B.Ed. cannot be considered as higher qualification for the purpose of incentive increment. Moreover, there is no specific provision in the Government orders in G.O.Ms.No.1297 or G.O.Ms.No.107 for granting incentive increment for B.Ed., degree while holding the post of Middle School Headmaster. The petitioner was granted incentive increment for M.A., Degree. The petitioner is not entitled to incentive increments for B.Ed., Degree, since the said degree was obtained/acquired after promotion to the post of Middle School Headmaster.



WEB COPY



W.P.No.32594 of 2017

7. The Tamil Nadu Government has issued G.O.Ms.No.42, Education Department, dated 10.01.1969 under Sl.No.5 and 6, it has been stated that Pandits I Gr and Pandits II Gr are eligible for incentive increments, if they have acquired higher qualification for B.T. or B.Ed., degree of any university in this State or Degree of other Universities recognized as equivalent to B.Ed., degree of other Universities regularized as equivalent to B.Ed., degree. The relevant portion is extracted hereunder:

Category	Scale of Pay	Higher Qualification for which two advance increments are admissible.
Pandits I Gr.	140-250 of low scale	B.T., or B.Ed., degree of a university in this state or degree of other Universities recognized as equivalent to BT of B.Ed., degrees of Universities of this State
Pandits Gr.II	90-4-110-5-140	-do-

8. While implementing the Government Order, certain issues arose and the same was addressed in G.O.Ms.No.1032, Education Department, dated 22.03.1971 and G.O.Ms.No.107 Education Department, dated 20.01.1978 and G.O.Ms.No.1024 Education, Science and Technology Department, dated 09.12.1993. In G.O.Ms.1032, it has been clarified as under:

(v) The following clarifications are issued regarding advance increments to secondary grade teachers.

1. A Secondary Grade Teacher (or other specialist teacher) will not get any financial benefit if he passes



WEB COPY



W.P.No.32594 of 2017

only B.A of B.Sc. He will get advance increments after passing B.A or B.Sc., he passes B.T. also

2. A Secondary Grade Teacher who first passes B.T and gets two advance increments, but who also still continues to work in a secondary grade post and who passes M.A., or M.Sc., will get two more advance increments.

3. A Secondary Grade Teacher who first passes M.A., or M.Sc., without first passing B.T need not be granted any advance increments at one stroke.

(vi) Four advance increments can be given at the same time B.T., Assistants who posses M.A (or M.Sc.,) and M.Ed.,

9. In G.O.Ms.No.107, it has been stated as under:

2. The present position regarding increments to Tamil Pundits (with reference to G.O.Ms.No.42 Edn. Dated 10.01.1969 and para 4 of G.O.Ms.No.1032 Edn, Dated 22.06.1971) is as follows.

(i) B.A and B.O.Ls. Can be appointed as Grade I Tamil Pandits only if they have passed B.T. Hence no incentive increment admissible to them for passing B.T. But they can get two incentive increments for passing M.A and two more for passing M.Ed.

(ii) Pulavars and vidwans can be appointed as Grade I Tamil Pandits even if they do not have B.T., but have only Pandits Training or Secondary Grade Training and completed S.S.L.C For appointment as Pandits Grade II also a B.T is not necessary. For these categories incentive increments are admissible only passing B.T. But not passing M.A., or M.Ed.

3. In Modification of para 2(ii) above, the Government now issue revised orders to following effect.

Tamil Pandits Grade I, who do not have to possess B.T., for initial appointment Grade II Tamil Pandits may be allowed two incentive advance increments either B.T. Or for M.A. Advance increments may be allowed a second time for such a teachers who after



W.P.No.32594 of 2017

passing B.T. Possess M.A., or after passing M.A. Passes B.T Advance increments shall not be allowed to them for passing M.Ed.

10. In G.O.Ms.No.1024 it has been stated as under:

3) Government now issue the following amendments to the G.O. First and third above.

(1) In the Annexure to G.O.Ms.No.42, Education dated 10.01.1969, for paragraph (ii) the following paragraph shall be substituted, namely:-

(ii) A Secondary Grade Teacher who has passed B.T. or B.Ed., degree examination and obtained two advance increments shall be eligible for another two advance increments for passing M.A., M.Sc., or M.Ed., Degree while working either in the Secondary Grade post or in B.T./B.Ed., Assistant post. A B.T. Teacher who after passing M.A., or M.Sc., and obtained two advance increments shall be eligible for another two advance increments is qualified M.Ed., Degree while working in B.T. Assistant Post or Headmaster post.

(ii)a) The maximum number of advance increments which a Teacher can get under the Scheme of incentive increments under this Government Order shall be four in his entire service.

(2) In G.O.Ms.No.746, Education, dated 30.06.1989, for paragraph 4, the following paragraph shall be substituted, namely:-

(3) The Government have considered the orders of the High Court referred to in para 3 above and the request of Thir.u V.Asirvatham to allow two more advance increments to him for acquiring M.Ed., qualification.

4. These orders shall take effect from the date of issue.

11. A communication dated 03.12.2010 by the Director of Elementary Education, wherein, it has been stated as under:

*“எனவே அரசாணை நிலை
எண்.107/பள்ளிக்கல்வித்துறை/ நாள் 20.01.1976*



WEB COPY



W.P.No.32594 of 2017

மற்றும் அரசாணை எண்.1024/கல்வி/நாள்
09.12.1993 ஆகியவற்றிற்கு உட்பட்டு
நடுநிலைப்பள்ளிகளில் தமிழாசிரியராகப்
பணிபுரிபவர்கள் பி.எட்., அல்லது எம்.ஏ. முதலில்
தேர்ச்சிப் பெற்றால் முதல் ஊக்க ஊதிய
உயர்வும் பின்னர் எம்.ஏ., அல்லது பி.எட்.,
தேர்ச்சி பெற்றமைக்கு 2-வது ஊக்க ஊதிய
உயர்வும் அனுமதிக்கலாம் என்றும், ஆனால் ஒரு
ஆசிரியரின் மொத்த பணிக்காலத்தில் 2 ஊக்க
ஊதிய உயர்வு மட்டுமே அனுமதிக்கலாமென்றும்
மேற்கண்டவாறு 2 ஊக்க ஊதிய உயர்வு
பெற்றவர்கள் பின்னர் எம்.எட்., தேர்ச்சிப் பெற்றால்
ஊக்க ஊதிய உயர்வு அனுமதிக்கக் கூடாது
என்றும், தங்கள் அலகிற்குட்பட்ட அனைத்து
உதவித் தொடக்கக் கல்வி அலுவலர்களுக்கும்
தெரிவிக்குமாறு அனைத்து மாவட்டத் தொடக்கக்
கல்வி அலுவலர்கள் கேட்டுக்
கொள்ளப்படுகிறார்கள்.”

12. The petitioner was not holding the post of Tamil Pandit while acquiring the B.Ed. degree. but was holding the post of HM. Moreover the B.Ed., is not considered as higher qualification for the purpose of incentive increment if the teacher is promoted. In other words, since the B.Ed., is one of the mandatory qualification for holding the post of Primary / Middle School Headmaster. subsequent qualification after promotion is superfluous. Hence the contention of the petitioner that he is eligible for B.Ed., is against Government orders and the Rules made thereunder. Even according to the petitioner after acquiring B.Lit., if the teacher had acquired B.Ed. then it is only “additional qualification” and not “higher qualification”. Incentive increment are granted to teachers when they acquire higher qualification and not



W.P.No.32594 of 2017

additional qualification.

WEB COPY

13. For the post of Primary School Headmaster and Middle School Headmaster, the required qualification is B.Ed., B.Lit., B.T. Under Rule 6(b)(i) Annexure of the Special Rules for Tamil Nadu Elementary Educational Subordinate Service Rules, B.Lit., B.Ed., B.A., and B.Sc., are considered as on par. The relevant portion of the Rule is extracted hereunder:

Name of Category	Method of Appointment	Qualification
Headmaster of Middle Schools (B.Ed., grade)	Promotion and Transfer	1.A degree of any University in the State or a degree of equivalent standard and B.T. or B.Ed. degree of any University in the State or 2.(a) A degree in Tamil of any University in the State or (B)Minimum General Educational Qualifications as defined in Schedule I to the General Rules for the Tamil Nadu State and Subordinate Service and Title of Oriental Learning conferred by any University in the State in the Language Provided that persons appointed as Tamil Pandit in any School prior to 01.04.1976 shall be eligible for appointment in any other School even after 01.04.1976 and 3.B.T., or B.Ed., degree of any University in the State or a Senior Basic Grade Trained Teachers Certificate or successful completion of the Pandit Training Course of Diploma in Teaching awarded by any University in the State.

Therefore it is evident that B.Lit., is not



W.P.No.32594 of 2017

considered as lower rank and B.Ed. is not considered as higher rank. Therefore, the qualification obtained after B.Lit., is not considered as higher qualification. In other words, B.Ed., and B.Lit., are considered on par. If that is so, the B.Ed., qualification cannot be considered as higher qualification. As per G.O.Ms.No.42, incentive increments are granted, if the Teachers acquires higher qualification. Since the B.Ed., is not considered as higher qualification, the Teachers are not eligible for incentive increments for acquiring B.Ed., Degree. In G.O.Ms.No.1297, it has been clarified that Primary School Headmaster who are promoted based on the B.Lit., qualification and the Middle School Headmaster, who are promoted based on the B.Lit., qualification, if they acquired B.Ed., the same is not considered as higher qualification and they are not eligible for incentive increment. B.Ed., is only one of the qualification to acquire M.A., and increment will be granted only for M.A., and not B.Ed.

14. Under Rule 6(b)(i) Annexure of the Special Rules for Tamil Nadu Elementary Educational Subordinate Service Rules, B.Lit., B.Ed., B.A., and B.Sc., are considered as on par. When the Rules specifically states and keeps these degrees on par, then the claim of the petitioners that B.Ed., should be higher qualification will not be valid argument. The petitioner



has relied on several judgments, however those judgments have not taken the rule amendment into consideration and hence the judgments cannot come to the rescue of the petitioner. Therefore, this Court is of the considered view that the judgments relied on by the petitioner is not applicable because of the factual error.

15. On perusal of these Government Orders, it has been specifically stated that B.Ed., acquired will not be considered as higher qualification and they are not entitled to. The concept behind this is that, the Tamil Nadu Government in order to promote Tamil has taken a policy decision to grant promotion as Primary School Headmaster or Middle School Headmaster if the teacher acquires B.Lit. qualification. The government in order to treat them on par with the B.T. And B.Ed., degree, has amended the rule under Rule 6(i). Therefore, the Government has taken the policy decision that B.Lit., and B.Ed., are on par, that is why in the subsequent clarification there was a deliberate omission of granting advance increments for B.Ed., degree if the individual is promoted a Headmaster or Pandit based on B.Lit. qualification.

16. In these circumstances, the petitioner is not eligible for incentive increment for the B.Ed., qualification. It is seen from the records that the



WEB COPY



W.P.No.32594 of 2017

petitioners were already granted incentive increment and therefore, the respondents are empowered to recover the same from the petitioner. Under those circumstances, the G.O.Ms.No.37 is relevant. Under Class 6(6) it has been stated that if any orders is passed in the administrative department for granting incentive increments, then the same would be considered after obtaining concurrence from the Finance Department. The relevant portion of the G.O.Ms.No.37 under sub clause 6 is extracted hereunder:

6. For the forgoing reasons, the Government have taken a decision to cancel / dispense with the scheme of sanction of advance increment for acquiring higher qualification and for passing Account Test for Sub ordinate Officers Part-I as per rulings (3) & (4) under FR 31-A and also to cancel the orders issued in Government Orders fifth to eighth read above. Accordingly, the Government issue the following directions:-

- i. As a policy decision, the scheme of sanction of advance increment for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled / dispensed with immediate effect*
- ii. The orders issued in the Government Orders fifth to eighth read above be cancelled with immediate effect.*
- iii. The sanction of the advance increment for*



WEB COPY



W.P.No.32594 of 2017

passing Account Test for Sub ordinate Officers Part-I as per rulings (3) & (4) under FR 31-A be dispensed with immediate effect

iv. The advance increment for acquiring higher qualification already granted to government servants need not be effected any recovery.

v. All the departments of Secretariat / Head of the Departments are requested to take up a review on this issue with reference to the special / adhoc rules of the posts (entry to higher level) of the department concerned and to prescribe higher qualification to the posts where ever necessarily required, so as to improve the services of the department concerned.

vi. The cases of the Government servants who have acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned, after obtaining concurrence of Finance Department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held / degree acquired.

vii) No fresh / further proposals will be entertained by Personnel and Administrative Reforms Department on this issue, in future.



WEB COPY



W.P.No.32594 of 2017

17. This Court has held supra that the G.O.s referred by the petitioner has not stated that the petitioner is entitled to the incentive increment for the B.Ed. and there is no order passed in the administrative department granting incentive increment for the qualification B.Ed. Since in the present cases incentive increments were already granted without any administrative order of the department, the granting of incentive increment is illegal. It is seen from the records that the petitioners were granted incentive increment and subsequently, it was cancelled and recovery was ordered. Hence this Court is remitting the cases of the petitioners to the Director of Elementary Education. The Director shall scrutinize the entire service records of the petitioners and then place the papers before the Finance Department and after obtaining concurrence from the Finance Department, the claim of the petitioner shall be considered in accordance with the law.

18. With these directions these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

6. In view of the fact that the issues raised by the petitioner are no



W.P.No.32594 of 2017

more *res integra* as it is settled in the judgment cited *supra*, the petitioner is not entitled for the relief and consequently, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2022

Index : Yes
Speaking order: Yes
kak

To

- 1.The District Elementary Educational Officer,
Kancheepuram District,
Kancheepuram.
- 2.The Assistant Elementary Educational Officer,
Thiruporur Union,
Kancheepuram District.



WEB COPY



W.P.No.32594 of 2017

S.M.SUBRAMANIAM, J.

kak

W.P.No.32594 of 2017

26.09.2022