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W.P.No. 31036 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 31036 of 2018

and

W.M.P.No. 36219 of 2018

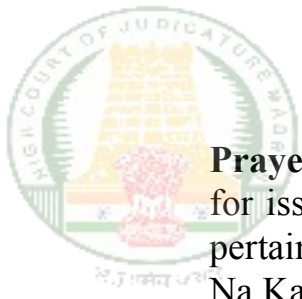
M. Balu

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Secretariat, Fort St. George, Chennai – 600009.
2. The Director of School Education,
College Road, Nungambakkam,
Chennai – 600006.
3. The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore Region, Coimbatore.
4. The Chief Educational Officer,
Coimbatore District, Coimbatore.
5. The Secretary,
Mahajana Higher Secondary School,
Mettupalayam – 641301,
Coimbatore District.

... Respondents



Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No. 1201/E3/2016, dated 31.05.2016 and consequential order of recovery passed by the 5th respondent in his proceedings dated 31.10.2018 and quash the same as illegal and consequently direct the respondents to sanction incentive increments for possessing M.Phil in Physical Education, to the petitioner in the light of the G.O.Ms. No. 324, Education, Science and Technology Department dated 25.04.1995.

For Petitioner	: Mr. Devaraj Mahesh
For Respondents	: Mrs. S. Mythreye Chandru Special Government Pleader for R1 to R4 R5- No appearance

ORDER

The order of rejection, rejecting the claim of the writ petitioner for grant of incentive increment for acquiring the qualification of M.Phil in Physical Education, is under challenge in the present writ petition.



2. The petitioner states that he is working as Physical Director Grade-I and he acquired the qualification of M.Phil in Physical education.

Accordingly, submitted an application for grant of incentive increment. The petitioner was initially sanctioned with the incentive increment and the competent authorities on verification found that there is no Government order to grant incentive increment for M.Phil in Physical Education during the relevant point of time.

3. The learned counsel for the petitioner relied on G.O.Ms No. 324, Education, Science and Technology Department, dated 25.04.1995 and states that the relevant subject would be sufficient for the purpose of granting of incentive increment. The petitioner studied M.Phil in physical education which is relevant to the post of Physical Director Grade-I and therefore he is entitled for the benefit of incentive increment.

4. The G.O. relied on by the petitioner i.e. G.O.Ms. No. 324, Education, Science and Technology Department, dated 25.04.1995 is a clarification issued with reference to the related subjects for which incentive increment be sanctioned. It is not a parent Government Order granting incentive increment with reference to M.Phil decree in physical education.



5. In the said G.O.Ms 324, Education, Science and Technology Department, dated 25.04.1995, the Government has stated that “ in future Physical Education Teachers, incentive increments will be only in the area of physical education and the Director of School Education will identify the relevant courses”

6. The said portion of the Government Order is a clarification issued to the subordinate officials. It was clarified by the Government that the incentive increment to be sanctioned only in respect of the area of physical education and the Director of School Education was directed to identify the relevant courses. However, there is no Government Order to sanction incentive increment for M.Phil decree, in the year 1995.

7. The learned Special Government Pleader, brought to the notice of this Court that the Government granted incentive increment for M.Phil Decree in physical education only through G.O.(Ms).No. 177, School Education Department dated 13.10.2016. As per the said G.O, position has been stated in the counter affidavit as under :



GO. Ms. No. 177/School Education [Paka 5(2)] Department Dated 13.10.2016 Physical Education Teachers, Physical Education Directors Grade I and II – incentive increments Higher Qualification Orders issued. [G.O. Issued following the Orders of the Hon'ble High Court Madras, in W.P. No. 15069 of 2016]	1. (a) <u>Physical Education Teacher (Secondary Grade Teacher Pay Scale)</u> Basic qualification being Government Teachers Certificate in Physical Education Lower Grade or Higher Grade. 1. (b) <u>Physical Education Teacher (Secondary Grade Teacher Pay Scale)</u> Basic qualification being B.P.Ed., (or) B.P. E.s., B.M.S., 1. (c) <u>Physical Education Teacher (Secondary Grade Teacher Pay Scale)</u> Basic qualification being M.P.Ed., 2. (a) <u>Physical Education Director Grade II (B.T. Assistant Teacher Pay Scale)</u> Basic qualification being B.P./ed., (or) B.P.E.s., B.M.S. 2(b) <u>Physical Education Director Grade II (B.T. Assistant Teacher Pay Scale)</u> Basic qualification being M.P. Ed., (or) M.P.E.s., 3. <u>Physical Education Director Grade I (P.G. Teacher Pay Scale)</u> Basic qualification being M.P.Ed., (or) M.P.E.S.,	(i) B.T. Or B.Ed., Degree (Before issue of G.O.No. 624/13.07.1992. (or) B.P.Ed., (or) B.P.E.s., B.M.S., any one or these. (ii) M.P. Ed., (or) M.P.E.S., (or) P.G. Diploma in Yoga by Recognized university or equivalent - 2nd incentive increment. (i) M.P. Ed., (or) M.P. E.S., (or) P.G. Diploma in Yoga by or equivalent - 1st incentive increment. (ii) M. Phil., (or) Ph.D. Degree - 2nd Incentive Increment) (i) M.Phil., (or) Ph.D. Degree in Physical Education (or) P.G. Diploma in Yoga – Incentive increments for each Degree for any 2 Degree (maximum 2 incentive increments) (i) M.P.Ed., (or) M.P.E.S., (or) P.G Diploma in Yoga by or equivalent - 1st incentive increment (ii) M.Phil., (or) Ph.D. Degree - 2nd Incentive Increment) (i) M. Phil., (or) Ph.D. Degree in physical Education (or) P.G. Diploma in Yoga or equivalent – for any 2 degrees – 2 incentive increments (maximum 2 incentive increments.) (i) M.Phil., (or) Ph.D. Degree in Physical Education (or) P.G. Diploma in Yoga or equivalent – for Any 2 Degrees -2 Incentive Increments (Maximum 2 incentive increments)
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	Other conditions specified in the G.O. No. 177, dated 13.10.2016 are: (i) There shall be maximum 2 incentive increments for whole service. (ii) The Second incentive eligible as per G.O. Shall be sanctioned with effect from the date of issues of G.O., i.e., with effect from 13.10.2016. (iii) For all those Physical Education Teachers mentioned as above the incentive increments shall be sanctioned for those higher educational qualifications acquired over and above the basic educational qualification specified in the G.O. No. 177/13.10.2016.
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8. It is further stated that only in G.O.Ms. No. 177 dated 13.10.2016, M.Phil decree, Ph.d Decree and Post Graduate Diploma in yoga or its equivalent decree have been incorporated for sanctioning incentive increment to physical education teachers/Directors.

9. Thus, the incentive increment erroneously granted prior to issuance of Government Order was sought to be recovered and there is no infirmity in respect of such recovery.

10. The learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court dated 18.12.2014 in W.A. (MD) No. 131 of 2014, wherein the Hon'ble Division Bench granted the relief of incentive increment in respect of the similar case. However, the Hon'ble Division Bench has not interpreted the scope of the Government Order



issued in G.O.Ms.No. 324. In respect of the Government Order issued in G.O.Ms. No. 324 it is unambiguous that it was a clarification issued with reference to the subjects for which the incentive increments to be sanctioned. However, the decree of M.Phil has not been stated in the said Government Order. Contrarily, the clarification was issued in Clause IV that in future Physical Education Teachers incentive increments will be only in the area of physical education and the Director of School Education will identify the relevant courses. 'What are all the relevant courses whether identified or not and incentive increment was sanctioned or not has not been elaborated in the Government Order. However the course of M.Phil was identified subsequently as an eligible decree for grant of incentive increment and the Government issued G.O.Ms. No. 177 dated 13.10.2016. Therefore, the incentive increment for M.Phil decree in Physical Education was sanctioned with effect from 13.10.2016 and the said increment cannot be granted based on the G.O.Ms. No. 324. In respect of the judgment of the Hon'ble Division Bench, this Court is unable to follow the same in view of the fact that the G.O was not interpreted by the Hon'ble Division Bench. In this regard, the principles to be followed are to be considered. The Hon'ble Division Bench of this Court in the case of Director of Sericulture Department vs Kumar reported in 2015 4 CTC 241, held as follows:



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'34. *It is true that consistency helps the parties to a litigation to know where they stand. But, when it is brought to the notice of the Court that on most of the earlier occasions, several similarly placed employees obtained orders at the stage of admission, on the ground that the issue is already covered by a decision of this Court and that it was only in this manner that several employees got a benefit that was not legitimately due to them, the Court cannot shut its eyes and choose to prefer maintenance of discipline rather than upholding public interest.*

35. *As a matter of fact, the greatness of the Court lies only in its courage and ability to correct its mistakes. Justice is more precious than discipline. This was the principle that the Supreme Court highlighted in [A.R.Antulay vs. R.S.Nayak](#) [AIR 1988 SC 1531]. It was observed in the said decision that "in rectifying an error, no personal inhibitions should debar the Court because no person should suffer by reason of any mistake of the Court." The Supreme Court focused on the elementary rule of justice that no party should suffer due to the mistake of the Court. Therefore, this Court should not feel shackled either by the rules of procedure or by the principles of propriety, when it is so glaring that a gross injustice has been done to the State (1) by writ petitions getting allowed at the stage of admission and (2) by getting those orders implemented under threat of contempt. This is especially so when the earliest decision that was followed in all other cases, did not decide the scale of pay to be granted for Selection and Special Grades. Hence, the second contention of the writ petitioners is also liable to be rejected.*
CONTENTION 3:

41. In [Union of India v. Kartick Chandra](#)



*Mondal [(2010) (2) SCC 422], the Supreme Court, relying upon its previous decisions in various cases including the one in [State of Bihar v. Upendra Narayan Singh \[\(2009\) 5 SCC 69\]](#), held that [Article 14](#) is a positive concept and that it cannot be enforced in a negative manner. The Court further held that if an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. Interestingly, the decision of the Supreme Court in *Kartick Chandra Mondal* was subsequent to the decision in *Maharaj Krishan Bhatt* and the decision in *Maharaj Krishan Bhatt* is also referred to in *Kartick Chandra Mondal*.'*

11. The Hon'ble Supreme Court of India in the case of ***Basavaraj and another vs Special Land Acquisition Officer reported in 2013 14 SCC 81*** held that:

'8. It is a settled legal proposition that [Article 14](#) of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be



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claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, [Article 14](#) cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: [Chandigarh Administration & Anr. v. Jagjit Singh & Anr.](#), AIR 1995 SC 705, [M/s. Anand Button Ltd. v. State of Haryana & Ors.](#), AIR 2005 SC 565; [K.K. Bhalla v. State of M.P. & Ors.](#), AIR 2006 SC 898; and [Fuljit Kaur v. State of Punjab](#), AIR 2010 SC 1937). '

12. In respect of the decisions where there is no interpretation of the rules or the Government Orders with reference to the specific relief, the courts would not be considered it as a precedent for the purpose of granting the same relief. Each case is to be considered with reference to the facts and circumstances established and application of mind with reference to the facts are far more important for deciding the issues. Contrarily, the power of judicial review cannot be exercised by merely following the earlier order wherein there is no interpretation regarding the rules or Government orders are made so as to form an opinion that the issues were settled.



13. In the present case, the Government granted incentive increment for M.Phil/Education Course in G.O.Ms. No. 177, School Education Department dated 13.10.2016 and therefore, the petitioner is eligible to get incentive increment based on the G.O.Ms. No. 177 from 13.10.2016. Accordingly, the respondents are directed to pay incentive increment for M.Phil Decree in physical Education to the petitioner based on G.O.Ms. No. 177 dated 13.10.2016 and accordingly adjust the excess amount if any paid to the writ petitioner. However, this court do not find any infirmity in respect of the order impugned.

14. With these directions, the writ petition stands disposed of. No costs.

09.11.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order



To

1. The Secretary,
The State of Tamil Nadu,
Department of School Education,
Secretariat, Fort St. George, Chennai – 600009.

2. The Director of School Education,
College Road, Nungambakkam,
Chennai – 600006.

3. The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore Region, Coimbatore.

4. The Chief Educational Officer,
Coimbatore District, Coimbatore.

5. The Secretary,
Mahajana Higher Secondary School,
Mettupalayam – 641301,
Coimbatore District.



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S.M.SUBRAMANIAM, J.

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