



W.P.(MD).No.3038 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.3038 of 2021

and

W.M.P.(MD).No.2427 of 2021

S.Sumathy

... Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai – 600 006.

2.The Joint Director of School Education
(Secondary Education),
College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Thoothukudi District,
Thoothukudi.

4.The District Educational Officer,
Thoothukudi District,
Thoothukudi.

5.The Secretary,
V.V.D. Memorial Higher Secondary School,
Arokiapuram,
Thoothukudi,
Thoothukudi District.

...Respondents



W.P.(MD).No.3038 of 2021

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the fourth respondent District Educational Officer in Na.Ka.No.3000/a2/2014 dated --.07.2017, quash the same and further direct the third respondent CEO and the fourth respondent DEO to sanction and disburse forthwith the incentive increment (two advance increments) for the M.A.Degree admissible to the petitioner.

For Petitioner : M/s.A.Amala
For R-1 to R-4 : Mr.V.Nirmal Kumar,
Government Advocate.
For R-5 : No Appearance

ORDER

The petitioner herein was appointed as a BT Assistant (History) on 28.10.2008. Even prior to her appointment, she had joined the M.A. (History) Post Graduate course on 19.09.2008 and subsequently, completed the same successfully. Her request for incentive increment for possessing higher educational qualification came to be rejected by the respondents herein on the ground that the petitioner had not obtained prior permission for acquiring higher educational qualification.



W.P.(MD).No.3038 of 2021

WEB COPY

2. The learned counsel for the petitioner submitted that since the petitioner had joined the Post Graduate course even prior to her appointment and also in view of the clarification of the District Educational Officer, Thoothukudi, that in view of the petitioner, having joined the course prior to her appointment, she would be entitled for incentive increment, the reason adopted by the respondents in the impugned order, rejecting her claim for incentive increment, cannot be sustained.

3. The learned Government Advocate appearing for the respondents 1 to 4 placed reliance on the averments in the counter affidavit and submitted that there is no infirmity in the impugned order, which mandates that for the purpose of sanction of an incentive increment, prior permission requires to be obtained from the educational authorities.

4. The issue as to whether such a prior permission for acquiring higher educational qualification for the purpose of grant of incentive increment is required has already been dealt in various decisions of this Court including the case of *S.Giltus Vs. The Chief Educational Officer, Thoothukudi, Thoothukudi District and others* in *W.P.(MD).No.3846 of 2021, dated*



W.P.(MD).No.3038 of 2021

01.03.2021, wherein, it was held that such prior permission for acquiring higher educational qualification and the consequential claim for incentive increment, is not required. The relevant portion of the order reads as follows:

“6. On perusal of the said judgment, it appears that there is no need to get any prior permission for undergoing higher studies. Paragraph Nos.12 and 13 of the said judgment is as follows:

“12. In the judgment reported in (2015) 6 MLJ 315, Director of Elementary Education, Chennai, vs. G.Vijayalakshmi and another, relied on by the petitioner, the Division Bench of this Court held as follows:-

"35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the



Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion or substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamilnadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have



W.P.(MD).No.3038 of 2021

issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs therecognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in sor far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under



WEB COPY



W.P.(MD).No.3038 of 2021

Section 18 of the Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff



therein, are bound to follow. At the risk of reptition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973."

13.The above judgment is squarely applicable to the present facts and circumstances of the case. Merely because the petitioner has not obtained prior permission from the Director of School Education for joining the correspondence course, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner is entitled to incentive increment."

5. The aforesaid extract is self explanatory. As such, the claim of the respondents that the petitioner ought to have obtained prior permission for the purpose of acquiring higher educational qualification and thereby, denying her claim for incentive increment cannot be sustained.



W.P.(MD).No.3038 of 2021

6. In the result, the impugned order, dated 26.07.2017, on the file of the fourth respondent is quashed. Consequently, there shall be a direction to the respondents 3 and 4 herein to pass appropriate orders granting two advance incentive increments to the petitioner for having possessed the higher educational qualification of M.A. (History), within a period of six (6) weeks from the date of receipt of a copy of this order.

7. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

21.07.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Director of School Education,
College Road,
Chennai – 600 006.
- 2.The Joint Director of School Education
(Secondary Education),
College Road, Chennai – 600 006.
- 3.The Chief Educational Officer,
Thoothukudi District, Thoothukudi.
- 4.The District Educational Officer,
Thoothukudi District, Thoothukudi.



WEB COPY



W.P.(MD).No.3038 of 2021

M.S.RAMESH, J.

Lm

W.P.(MD).No.3038 of 2021

21.07.2022