



W.P(MD)No.3067 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3067 of 2022

and

W.M.P.(MD)No.2678 of 2022

A.Dhanalakshmi

... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St George, Chennai - 600009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600006.

3.The District Education Officer,
Thanjavur District, Thanjavur.

4.The Block Education Officer,
Peravurani, Pattukottai Taluk,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the fourth respondent in Na.Ka.No.1378/A1/2021 dated 21.12.2021 and quash the same.



W.P(MD)No.3067 of 2022

For Petitioner : Mr.V.R.Shanmuganathan

For Respondents : Mr.J.Ashok,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner jointed the Education Department as Secondary Grade Teacher on 06.01.1990. She was promoted as Primary School Headmaster and then as B.T.Assistant (Tamil). She was promoted as Middle School Headmaster on 02.06.2009 and she is working as such till date. The petitioner obtained permission from the department and acquired B.Ed. degree in the year 2011. She applied for one set of incentive increment from the date of acquisition of B.Ed. decree. The petitioner's request was granted.

3.Whiles0, without prior notice to her, the grant of incentive increment was cancelled on 28.11.2017. Questioning the same, the petitioner filed W.P.(MD)No.464 of 2018. The said writ petition was allowed and the matter was remanded to the file of the fourth respondent. The fourth respondent issued notice dated 06.12.2021 calling upon the petitioner to show cause as to why the incentive increments granted to her should not be cancelled. The



W.P(MD)No.3067 of 2022

petitioner offered her reply on 08.12.2021. After consideration of the same, the impugned order dated 21.12.2021 was issued whereby the incentive increment granted with effect from 01.06.2011 was cancelled and the petitioner was also directed to repay what was already paid. Challenging the same, the present writ petition has been filed.

4.The respondents have filed a detailed counter affidavit controverting the averments set out in the affidavit filed in support of the writ petition.

5.The learned counsel for the writ petitioner contended as follows:-

5(a) The writ petitioner was appointed as Headmaster of Middle School in the year 2009. As per Special Rules for the Tamilnadu Elementary Education Sub-ordinate Service Rules, the method of appointment was as follows:-

“Method of appointment:

(i)

(ii) *Transfer from Category 2 Language Pandit Grade-I of Class I of the said service provided that if no B.Ed., or Language Pandit Grade I Teacher is available for appointment to the category within the unit, such vacancy shall be filled by B.Ed., Teacher or Language Pandits Grade I by transfer from other units.”*



W.P(MD)No.3067 of 2022

5(b).The qualification has been set out in the annexure in the following

terms:-

Class	Name of Category	Method of Appointment	Qualification
Class I	Headmasters Headmistress 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; 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 Government State and Subordinate Service and title or Oriental Learning conferred by any University in the language; Provided that persons appointed as Tamil Pandit in any school prior to 1.4.76 shall be eligible for appointment in any other school even after 1.4.76; and (c) B.T. or B.Ed. degree of any University in the State or a Trained Teachers Certificate of the Secondary Grade or a of the Pandit Training Course or Diploma in



W.P(MD)No.3067 of 2022

			Teaching awarded by any University in the State.
Class I	Headmasters Headmistress of Middle Schools (B.Ed. Grade)	Direct Recruitment	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; 2.(a) A degree in Tamil of any University in the State. (b) Minimum General Educational Qualifications as defined in Schedule to the General Rules for the Tamil Nadu Government State and Subordinate Service and title or Oriental Learning conferred by any University in the language. and (c) B.T. or B.Ed. degree of any University in the State or a Trained Teachers Certificate of the Secondary Grade or a Senior basic grade trained teachers certificate or successful completion of the Pandit Training Course or Diploma in Teaching awarded by any University in the State.



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W.P(MD)No.3067 of 2022

Language Pandit Grade I (Tamil) and Language Pandit Grade I (other than Tamil)	Direct Recruitment, Promotion and Transfer	(1). B.Lit. Degree of the Madras University or its equivalent in any University in the State in the language in respect of which recruitment is necessary and Teacher Training of Madras University or any other Universities; or 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 in respect of which recruitment is necessary. (2) B.T. or B.Ed. degree of any University in the State or a Trained Teachers Certificate of the Secondary Grade or a Senior basic grade trained teachers certificate or successful completion of the Pandits Training Course or Diploma in Teaching awarded by any University in the State.
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W.P(MD)No.3067 of 2022

5(c).The writ petitioner belonged to Language Pandit Grade-I and since she possessed a degree in Tamil, she was eligible to be promoted as Middle School Headmaster. The eligibility of the writ petitioner to be promoted to the said post with the qualifications that she originally possessed cannot be in doubt. In fact, it is not contested by the respondents also. The petitioner acquired an additional degree namely, B.Ed. only in the year 2011, that is, after becoming Middle School Headmaster. For acquiring such an additional qualification, the petitioner was entitled to be granted one set of incentive increment. It was rightly granted with effect from 01.06.2011.

5(d).When in similar cases, such grant was subsequently cancelled, the matter was settled by the Hon'ble Division Bench in W.A.(MD)No.435 of 2017 dated 25.04.2017. The Hon'ble Division Bench in the said decision held as follows:-

“6. We are not in agreement with the learned Single Judge in rendering such finding. What was required to be considered is as to whether the appellant/writ petitioner is entitled for the incentive increment. Therefore, we are inclined to consider that point in this appeal. To take a decision on the matter, we need not labour much to determine the issue as a clear stand as to who would be entitled for incentive increment has been taken by the Department. When information was called for on what is the required qualification for being posted as Middle School Headmaster, one of the candidates



W.P(MD)No.3067 of 2022

received a reply under the Right to Information Act vide reply dated 16.02.2012 from the office of the Director of Elementary Education stating that there is no necessity for possessing B.Ed., qualification for being posted as Middle School Headmaster and B.Lit., degree is sufficient to post a person as a Middle School Headmaster. The operative portion of reply given under the Right to Information Act is quoted herein below:

" 1. தமிழ்நாடு தொடக்கக் கல்வி இயக்குநர், சென்னை-6 ந.க.எண். 24356/121/2005 நாள்.24.11.2006ன் படி தமிழ்நாடு தொடக்கக் கல்வி சார்நிலைப் பள்ளி விதிகள் (அரசாணை) நிலை எண் 1383ல் வெளியிடப்பட்டவை விதி 6(b)(1) ல் நடுநிலைப்பள்ளி தலைமையாசிரியர் பணியிடங்களுக்கு வரையறுக்கப்பட்டுள்ள கல்வித் தகுதிகளில் பி.லிட் மட்டம் பெற்றவர்களுக்கு நடுநிலைப் பள்ளி தலைமையாசிரியர்களாகப் பதவி உயர்வு வழங்க வழிவகை செய்யப்பட்டுள்ளதால் பி.எட் மட்டம் தேவையில்லை.

2. நாமக்கல் மாவட்டத் தொடக்கக் கல்வி அலுவலரின் ஒ.மு.எண் 2005/அ2/2009 நாள் 03.06.09 ன் பத்தி 2ன் படி பி.லிட் மட்டம் பெற்று பணியாற்றப்பவர்களுக்கு பி.எட் தேர்ச்சிக்கு ஊக்க ஊதிய உயர்வு பெற தகுதி உண்டு."

7. Furthermore we find that in somewhat a similar case pertaining to a Tamil Pandit, Thiru.S.Samuthirakani who was appointed that as Middle School Headmaster and subsequently claimed for incentive increment on acquisition of B.Ed., qualification. Clarification was sought for from the Director of School Education as to whether the said increment can be granted and if already granted, whether it has to be stopped. The Director of Educational Education by proceedings dated 07.06.1991 clarified that the post of Middle School Headmaster is a higher post than that of a Tamil Pandit, having a higher basic pay and therefore, there is



W.P.(MD)No.3067 of 2022

no necessity for stopping the increment granted to the said Headmaster Thiru.S.Samuthirakani. This clarification would also be applicable to the facts of the case of the appellant/writ petitioner.

8. Thus in the light of the clarification issued, it is clear that B.Ed., qualification is not a required qualification for being posted as Middle School Headmaster and in such circumstances acquisition of B.Ed., while holding in the post of Middle School Headmaster has to be considered as higher qualification and therefore, the Department was right in passing the order dated 29.09.2014 granting incentive increment to the appellant/writ petitioner with effect from 24.01.2011. Further we find that before passing the impugned proceedings dated 30.11.2016, the appellant/writ petitioner was not put on notice and there was no opportunity granted to the appellant/writ petitioner to put forth her case. Under such circumstances, normally this Court would have remanded the matter for fresh consideration to comply with the requirements of principles of natural justice. However, in this case, we take departure from the said procedure on account of the fact that it is clear from the clarification issued by the Director of Elementary School Education as well as from the information furnished under the Right to Information Act that the appellant/writ petitioner is entitled for the incentive increment on acquisition of B.Ed., qualification. Therefore, we are inclined to interfere with the order passed in the writ petition and consequently the order passed by the third respondent dated 30.11.2016.

9. In the light of the above, this Writ Appeal is allowed and the order passed in W.P.(MD)No.60 of 2017 dated 04.01.2017 is set



W.P(MD)No.3067 of 2022

aside and consequently the order passed by the third respondent dated 30.11.2016 is quashed and it is held that the appellant/writ petitioner is entitled for incentive increment which was already sanctioned and is paid to the appellant/writ petitioner with effect from 24.01.2011.”

6.The learned counsel for the writ petitioner pointed out that the said decision was followed in a catena of decisions and as many as seven such orders have been enclosed in the typed set of papers. The last such order is dated 28.10.2021 was made in W.P.(MD)No.16561 of 2017. He reminded that as a matter of judicial discipline, this Court is bound by the aforesaid orders and that it ought not depart from the said view.

7.The learned Additional Government Pleader for the respondents submitted that the impugned order does not call for interference.

8.I carefully considered the rival contentions and went through the materials on record. Two issues arise for consideration. The first issue is whether the fourth respondent is justified in cancelling the incentive increment granted to the writ petitioner for her having acquired the additional qualification of B.Ed. decree. The second issue is whether the respondents are justified in ordering recovery of the incentive increment already paid to the writ petitioner.



W.P(MD)No.3067 of 2022

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9. Let me answer the second issue first. The writ petitioner has not committed any misrepresentation. The respondents themselves had accepted her request for grant of additional increment. The petitioner is not at all at fault. The Hon'ble Supreme Court in the decision reported in **(2015) 4 SCC 334 State Of Punjab & Ors vs Rafiq Masih (White Washer)** held as follows:-

“ Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.



W.P(MD)No.3067 of 2022

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

10.It is also seen that several Middle School Headmasters who had acquired the aforesaid qualification were granted incentive increment. Therefore, even if the primary issue is answered against the writ petitioner, ordering recovery will not only be inequitable and unfair but also monstrous. This is more so because recovery is being ordered after a lapse of several years (vide Na.Ka.No.1378/A1/2021 dated 21.12.2021). I therefore have no hesitation to hold that ordering recovery of the incentive increment already paid to the writ petitioner is to be set aside. It is accordingly set aside.

11.Now let me come to the first issue. I wanted to know on what basis, such incentive increments are granted. It appears that the foundational orders are G.O.(Ms) No.42 Education Department, dated 10.01.1969 and G.O.(Ms) No.107 Education Department, dated 20.01.1976. G.O. (Ms) No.42 Education Department, dated 10.01.1969 is as follows:-



W.P(MD)No.3067 of 2022

G.O.MS.NO.42 Education dept. dated 10th January 1969.

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Education – Fourth Five Year Plan – Scheme for Incentive Payments and awards to teachers during 1968-69 Sanctioned.

Read: The following papers:-

From the Director of School Education, letter No. 186476/PDI/67
Dt. 3rd October 1967 and 26th June 68.

The Government have already accepted in principle that incentive payments and awards should be given to the teachers in schools who acquire higher educational qualifications. The Director of School Education has accordingly submitted proposals as indicated in Annexure to this order.

2. The Government approve of the proposals of the Director of School Education and direct that advance increments be granted to them as indicated in the Annexure.

3. The expenditure should be debited to '28 Education Z development schemes-Schemes in Fourth Five Year Plan- Miscellaneous –O-Incentive Payment and awards to teachers'. The Director of School Education is requested to take action to provide additional funds required by reappropriation from savings.

4. This order issues with the concurrence of the Finance Department Vide its U.O.No.410/PLX/69-1, dt. 7th January 1969.

(By order of the Governor)

Sd/-

Secretary to Government.



W.P(MD)No.3067 of 2022

8. Other Specialist teachers.	90-4-110-5-140	B.T or B.Ed or other recognised equivalent degrees in this state.
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2. A secondary grade teacher who after passing B.T or B.Ed degree examination qualifies for M.A or M.Sc or M.Ed degree but working in secondary grade post may be given advance increments for second time also, i.e two advance increments after passing B.T or B.Ed degree and another two after passing M.A. or M.Ed degree. B.T. Teacher after passing M.A or M.Sc qualifies for M.Ed degree examination but working in B.T or Headmasters post may be given advance increments for a second time also i.e two advance increments after passing M.Ed degree.

3. The advance increments may be given from the day following the last day of the examination in higher qualification mentioned in column (3) of the table whichever is later. In case the regular increment due to person is with held by way of punishment the advance increment admissible should given only after the regular increment is sanctioned.

4. In the case of persons entering service on or after 1st july 1968 possessing the higher qualification, their initial pay may be fixed by giving advance increments in their scale of pay.

5. In the case of Panchayat unions and municipalities including corporation of Madras and townships the expenditure towards the grant of advance increments may be taken into account for purpose of payment of subsidy according to the pattern of aid admissible and no special subsidy may be paid to them. In the case of aided schools the expenditure will be taken into account for purpose of staff grant in the case of secondary schools and teaching grant in the case of elementary schools.

Sd/-

Secretary to Government.



W.P(MD)No.3067 of 2022

ANNEXURE

A teacher belonging to the category mentioned in column (1) of the Table below shall be eligible for the two advance increments in the scale of pay admissible for this category if he /she possesses or acquires higher qualification specified in column B provided the maximum in the scale of pay is not reached.

Category	Scale of pay	Higher qualification for which two advance increments are admissible
1	2	3
1. Secondary or Senior Basic Grade Teachers	90-4-110-5-140	B.T. or B.Ed degree of a University in the state or the degrees of other universities recognised as equivalent to the degree of B.T or B.Ed degree of Universities of this state.
2. B.T, B.Ed Assistants	140-5-180-10-250 225-10-275-15-350	M.A. or M.Sc, M.Ed degree of a university in the state or the degree of other universities recognised as equivalent to M.A/M.Sc or M.Ed degree of universities of this state.
3. Headmasters of Govt. Board Schools and Municipal Township schools	225-10-275-15-350	---Do---
4. Headmasters Aided High Schools	225-10-275 300-15-430	---Do---
5. Pandits I Gr.	140-250 or lower scale	B.T or B.Ed degree of a university in this state or degree of other universities recognised as equivalent to B.T or B.Ed degrees of universities in this state.
6. Pandits II Gr.	90-4-110-5-140	--- Do ---
7. Physical Training Instructors, I Gr	90-4-110-5-140	B.T. or B.Ed degree of a university in this state or degrees of other universities recognised equivalent to B.T or B.Ed degree of a university in this state or Diploma in physical education



W.P(MD)No.3067 of 2022

A reading of the aforesaid G.O. indicates that if a Tamil Pandit acquires B.T or B.Ed., he or she must be given an incentive payment. In this case, we are not concerned with the grant of incentive to a Tamil Pandit. We are concerned with the case of incentive granted to a Headmaster of Middle School. Of course, G.O.(Ms) No.42, dated 10.01.1969 also talks about conferring additional incentive to Headmasters. But then, they must acquire P.G. Degrees or M.Ed. If a Headmaster acquires B.Ed., grant of incentive increment is not envisaged by G.O.(Ms) No.42 dated 10.01.1969.

12.The other G.O. on which reliance is placed is G.O.(Ms) No.107 dated 20.01.1976. The said G.O. also contemplates granting of incentive increment to Tamil Pandits for acquiring higher qualification. Therefore, the said G.O. also will not come to the petitioner's rescue. Of course, the order of Hon'ble Division Bench rendered in W.A.(MD)No.435 of 2017 dated 25.04.2017 supports the contentions advanced by the learned counsel for the writ petitioner. The aforesaid writ appeal order has been extracted in extenso. The Hon'ble Division Bench was swayed by the clarification given under Right to Information Act vide Oo.Mu.No.37606/M1/2011 dated 16.02.2012. The Secretary to Government, School Education Department, Government of Tamilnadu, Chennai – 600 006 had subsequently clarified vide Letter



W.P(MD)No.3067 of 2022

No.3702/2017 dated 10.10.2017 that if any Pandit after getting promoted as Middle School Headmaster obtains B.Ed. for such persons, there is no scope for granting incentive increment. In fact, this clarificatory letter dated 10.10.2017 issued by the Government merely explains the position and it is not saying anything new. In view of this clarification letter issued by the Government, the position undergoes substantial change. In the subsequent orders issued by the various Judges also, this clarificatory letter of the Government is not taking note of.

13. More than anything else, as rightly pointed out by the learned Special Government Pleader, the post itself is called as Headmaster of Middle School (B.Ed. Grade). The petitioner of course was eligible to be promoted as Headmaster B.Ed. Grade, even though she was not having B.Ed. Otherwise, B.Ed. was held to be an essential qualification. Therefore, cancellation of the incentive increment granted to the writ petitioner in light of the clarificatory letter of the Government, dated 10.10.2017 is in order and it does not warrant any interference. The impugned order is quashed to the extent it orders recovery. The order cancelling the incentive increment conferred on the writ petitioner for her having acquired B.Ed. degree qualification is sustained.



W.P(MD)No.3067 of 2022

WEB COPY

14.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2022

Index : Yes / No
Internet : Yes/ No
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To:

- 1.The Secretary to Government,
School Education Department,
Fort St George, Chennai - 600009.
- 2.The Director of Elementary Education,
DPI Campus, College Road,
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W.P(MD)No.3067 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.3067 of 2022

23.09.2022
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