



W.P(MD)No.6558 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6558 of 2020

and

W.M.P(MD)Nos.5904 & 5905 of 2020

P.Muthukrishnan

... Petitioner

Vs

- 1.The State represented by
The Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Trichy District,
Trichy.
- 4.The District Educational Officer,
Lalkudi,
Trichy District.
- 5.The Block Educational Officer,
Manachanallur,
Trichy District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the fifth respondent, Block Educational Officer in O.Mu.No.540/A4/2019 dated ..07.2019, quash the same and further direct the respondents to sanction two advanced increments to the petitioner for acquiring B.Ed Degree w.e.f 01.06.1991.

For Petitioner : Mr.S.Xavier Rajini

For Respondents : Mr.S.Shaji Bino
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The case of the writ petitioner is that he joined Education Department way back in the year 1963. He was working in various places. He was promoted as Tamil Pandit and posted in Panchayat Union Middle School, Poonampalayam on 01.06.1991. He was promoted as B.T.Assistant and posted in Panchayat Union Middle School, Edumalai in the year 1994. In the meanwhile, he acquired B.Ed Degree in May 1992. He retired from service on 31.12.1996 and continued to work on re-employment basis till 31.05.1997. The grievance of the petitioner is that he was entitled to incentive increment as per G.O(Ms)No.42 (Education Department), dated 10.01.1969. Claiming re-fixation of his pay, other benefits and disbursement of the arrears, the petitioner



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filed representation before the authorities. By the impugned order, the same was returned. Questioning the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that any tamil pandit who has acquired additional degree, namely, B.Ed is entitled to increment in terms of G.O(Ms)No.42 (Education Department), dated 10.01.1969. Hundreds of similarly placed teachers were granted such incentive increment. For reasons that are not clear, the petitioner was not granted such increment. The petitioner approached the respondents to consider his request favorably and disburse the arrears also. Without doing so, mechanically, the petitioner's proposal was returned.

4.As regards the plea of delay and laches, the learned counsel appearing for the petitioner relied on a catena of decisions. They are as follows :

- “1. Tukaram Kana Joshi & Others Vs. M.I.D.C & Others reported in (2012) 8 MLJ 515 (SC)*
- 2. Improvement Trust, Ludhiana Vs. Ujagar Singh & Others reported in (2010) 7 MLJ 141 (SC)*
- 3. P.Dhanalakshmi Vs. State of Tamil Nadu & Others in W.A.No.1456 of 2021*
- 4. The Director of Elementary Education Vs. K.Sornakumari in W.A(MD)No.658 of 2019*



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***5. K.Sornakumari & Another Vs. The Director of Elementary Education
& others in W.P(MD)Nos.21368 of 2014 & 4332 of 2015***

***6. N.Jwahar & others Vs.The Government of Tamil Nadu in
W.A.Nos.815, 1531, 1691 to 1693 of 2010”***

5.The essence of the aforesaid decisions is that if a claim is otherwise meritorious, it should not be rejected by the writ Court on the ground of laches. In cases such as this, the cause of auction should be considered as a continuing one. The doctrine of laches will be invoked only if third party right has intervened. When the issue is only between the citizen on the one hand and the State on the other, the department should never fall back on the principle of laches. The learned counsel appearing for the petitioner called upon this Court to set aside the order impugned in the writ petition and allow the writ petition as prayed for.

6.The learned Special Government Pleader appearing for the respondents submitted that the writ petition is hopelessly time barred. The respondents filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. He also points out that the scheme of sanctioning advance increments to Government servants for acquiring higher qualifications has been done away with vide G.O(Ms)No.37, Personnel and Administrative



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Reforms (FR-IV) Department, dated 10.03.2020. He relied on the operative portion of the said government order which indicates that if no order had already been passed for payment of advance increment, fresh proposal cannot be entertained any more. He submitted that the writ petitioner has no case even on merits and pressed for dismissal of the writ petition.

7.I carefully considered the rival contentions and went through the materials on record. In the counter affidavit, the service particulars of the writ petitioner have been set out. Paragraph 3 reads as under:

“3.I respectfully submit that the petitioner was initially appointed as Secondary grade teacher on 05-09-1963 and worked as detailed below:

- | | |
|---|--------------------------------------|
| <i>a. Primary School Headmaster</i> | <i>from 05-09-1963 to 09-06-1967</i> |
| <i>b. Middle School Headmaster</i> | <i>from 10-06-1967 to 18-07-1973</i> |
| <i>c. Secondary grade teacher</i> | <i>from 19-07-1973 to 19-06-1990</i> |
| <i>d. Primary school Headmaster</i> | <i>from 20-06-1990 to 03-06-1991</i> |
| <i>e. Tamil Pandit</i> | <i>from 04-06-1991 to 04-08-1992</i> |
| <i>f. B.T. Middle School Headmaster</i> | <i>from 05-08-1992 to 31-12-1996</i> |
- The petitioner retired on 31-12-1996.”*

The case of the writ petitioner is that since he acquired B.Ed Degree when he was Tamil Pandit and before he was promoted as B.T.Middle School Head Master, he must have been granted incentive increment. The respondents have contended in the counter affidavit that even though the writ petitioner was not qualified to hold the post of Middle School Headmaster with higher scale of



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pay as he was holding the said post on 01.10.1970. He was allowed to receive the scale of pay of Middle School Head Master with effect from 01.06.1988.

Thus when the petitioner acquired B.Ed Degree, he was already drawing the scale of pay admissible to the post of Middle School Head Master. The petitioner was holding the post of Middle School Headmaster even before acquiring B.Ed qualification. B.Ed is very much an essential qualification for holding the post of Middle School Headmaster. These aspects cast considerable doubt on the petitioner's entitlement to receive incentive increment. It is not as if the petitioner has made out a straightforward case for being conferred with benefit.

8. Admittedly, the petitioner retired way back on 31.12.1996. He made a request for grant of intensive increment only in the year 2019. That is after a lapse of 23 years. This request of the writ petitioner was not accepted by the competent authority. Now the question that arises for consideration is whether after a gap of full 23 years, payment of incentive increment can be granted. Of course, in many of the decisions relied on the learned counsel for the petitioner, it was held that grant of pension and receiving pension is a fundamental right and therefore, delay in such cases was not put against the claimant. But demand for conferment of incentive increment cannot be placed on the same footing. In any event, 23 years is an inordinately long. The petitioner has not



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set out any explanation as to why he did not knock the doors of the authority earlier in point of time. The writ petitioner has raised this demand only after a gap of 23 years for the first time. On this ground, I decline to grant relief.

9.This writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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