



W.P.(MD).No.12681 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.12681 of 2022

and

W.M.P(MD).Nos.8990 and 8991 of 2022

A.John Bosk

... Petitioner

/Vs./

- 1.The Commissioner of School Education,
O/o., Commissioner of School Education,
Nungambakkam, Chennai.
- 2.The Joint Director of School Education (Personnel),
O/o., The Joint Director of School Education,
Chennai 600 006.
- 3.The Chief Educational Officer,
Office of the Chief Educational Office,
Pudukkottai, Pudukkottai District.
- 4.The District Educational Officer,
O/o., The District Educational Office,
Pudukkottai, Pudukkottai District.
- 5.The Correspondent,
St.Mary's Higher Secondary School,
Perangulam, Alangudi Road,
Pudukkottai District.

...Respondents

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



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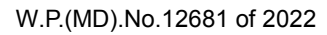
records relating to the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.3199/A5/2020, dated 31.03.2021 and the consequential impugned order passed by the fourth respondent in his proceedings Mo.Mo.No.3199/A5/2021 dated 27.10.2021 and quash the same illegal and consequentially to direct the respondents to sanction the incentive increment to the petitioner for having acquired M.Phil within the period that may be stipulated by this Court.

For Petitioner : Mr.Mohamed Imran
for M/s.Ajmal Associates
For Respondents : Mr.S.Shaji Bino
Special Government Pleader (for R1 to R4)

ORDER

The petitioner's request, for grant of incentive increment for having possessed the higher educational qualification of M.Phil, was earlier rejected by the fourth respondent herein, through an order dated 24.03.2020, on the ground that prior permission for acquiring the higher educational qualification was not obtained from them. When the petitioner had challenged the same before this Court in WP(MD)No.10485 of 2020, the same came to be allowed on 31.08.2020 in the following manner:

“that the impugned order dated 24.03.2020 is quashed and the matter is remitted back to the respondents, especially, the third respondent, who shall reconsider the issue once





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Director of School Education, College Road, Chennai – 600 006 & others

passed in **WP(MD)No.3038 of 2021** dated **21.07.2022**, this proposition was held in the following manner:

*“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 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



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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 of 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 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



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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 the recognised 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 so far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under 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 repetition, 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



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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.”

4.The aforesaid order is self explanatory. As such, the impugned order, claiming that the petitioner ought to have obtained permission for acquiring higher educational qualification of M.Phil, cannot be sustained. Accordingly, the impugned order, dated 31.03.2021 on the file of the fourth respondent and the consequential impugned order, dated 27.10.2021 are hereby quashed.



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Consequently, there shall be a direction to the respondents to pass appropriate orders, granting incentive increment to the petitioner for having acquired the higher educational qualification of M.Phil, within a period of four (4) weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes
Internet : Yes
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To:

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Nungambakkam, Chennai.
2. The Joint Director of School Education (Personnel),
O/o., The Joint Director of School Education,
Chennai 600 006.
3. The Chief Educational Officer,
Office of the Chief Educational Office,
Pudukkottai, Pudukkottai District.
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M.S.RAMESH, J.

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