



W.P.(MD).No.14470 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.14470 of 2022

and

W.M.P.(MD).No.10347 of 2022

D.Anne Angel Jeba

... Petitioner

Vs.

1.The Chief Educational Officer,
Thanjavur,
Thanjavur District.

2.The District Educational Officer,
Thanjavur,
Thanjavur District.

3.The Correspondent,
St.Peter's Higher Secondary School,
Thanjavur – 613 009,
Thanjavur 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 records relating to impugned proceedings in Na.Ka.No.1825/A4/2021 one dated 13.08.2021 of the second respondent herein and quash the same and consequently direct the respondents herein to award incentive increment for M.Phil degree with effect from the date of passing of the said degree to the petitioner herein with attended benefits.



For Petitioner : Mr.T.Pon Ramkumar
For R-1 and R-2 : Mr.A.Kannan,
Additional Government Pleader.

ORDER

The petitioner herein is serving as a BT Assistant in the third respondent School, which is a minority aided educational institution. When she had sought for award of incentive increment for having passed the higher educational qualification of M.Phil., the second respondent herein had initially rejected the claim on 17.06.2020, by stating that since the petitioner herein had not obtained the prior permission from the authorities for acquiring higher educational qualification, she is not entitled for the incentive increment.

2. The challenge to the order, dated 17.06.2020, in W.P.(MD).No.6949 of 2021 came to be allowed by this Court by an order, dated 29.03.2021, by placing reliance on the decision of this Court in the case of ***J.Tamilrajan Vs. Department of School Education and others***, passed in ***W.P.(MD).No.4019 of 2018*** in the following manner:

“The petitioner herein, has possessed higher education during his service under the third respondent herein and he aspired to avail incentive increment for his higher education, in terms of the



Regulations governing them. When the third respondent had sought for the approval for registration of the petitioner's higher qualification for the purpose of granting incentive increment, the same came to be rejected by the second respondent herein, stating that, the petitioner had not obtained prior permission of the Authorities, for undergoing higher education.

2. The petitioner herein intends to avail incentive increment for having possessed higher educational qualification and the purpose for which the ratification of his higher degree was sought for was to make the petitioner eligible for availing the said increment.

*3. This Court, in various writ petitions have held that claims for conferment of incentive increment for acquiring higher educational qualifications cannot be denied on the ground that such higher qualifications were acquired without prior permission. One such order of this Court passed in the case of **J.Tamilrajan vs. Department of School Education and others** passed in W.P.(MD) No.4019 of 2018, reads thus:-*

“3.In W.P(MD).No.1049 of 2012, a learned single Judge of this Court has considered the similar question and has rejected the claim of the department that if the higher education is pursued without consent of the permission of the department, the teacher was not entitled to the incentive increments for obtaining such higher qualification. Following the said Judgment, another learned single Judge of this Court in W.P.No.18086 of 2017 has held that want of permission

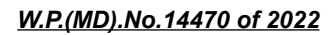


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cannot stand in the way of the petitioner being favoured with the incentive increments for having obtained higher qualifications. While doing so, paragraph 7 of the order, this Court has observed as follows:

“7.This Court in the unreported decision made in W.P(MD).No.21895 of 2015 dated 08.12.2015, while considering the claims for conferment of incentive increment for acquiring qualification and the contention that they were acquired without prior permission, held that conferment of incentive increment cannot be denied on that score. Acquiring higher education by the teacher is only for the benefit of students. In that view of the matter, the first ground of opposition stands rejected”

4. In view of the above, the sole ground on which the authorities rejected the claim of the petitioner towards incentive increments fails and the writ petition is liable to succeed. The impugned order of rejection is therefore, quashed. The respondents are directed to sanction the incentive increments to the petitioner for obtaining the higher qualifications namely M.A.History and B.Ed Degree from the date of acquisition of the respective qualifications. The said exercise shall be completed within 8 weeks from the date of receipt of a copy of this order.”



3. The aforesaid extract is self explanatory. As such, the reasoning adopted by the second respondent that the petitioner had not obtained prior sanction of the authorities for acquiring higher educational qualification, cannot be sustained. It is in this background, that this Court had directed the second respondent herein to grant incentive increment to the petitioner for acquiring the higher educational qualification.



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4. However, in total disregard to the directions of this Court, the present impugned order has been passed, wherein, the second respondent had placed reliance on G.O(Ms)No.37 Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and G.O(Ms)No.116 Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020 and stated that since the scheme of granting incentive increment to the teachers was already cancelled, they are not in a position to consider the petitioner's request for grant of incentive increment.

5. While the learned counsel for the petitioner submitted that since this Court had earlier passed positive orders for grant of incentive increment, the second respondent is not justified in rejecting the same, the learned Additional Government Pleader appearing for the first and second respondents placed reliance on G.O(Ms)No.37 and submitted that since no previous orders were issued in the case of the petitioner for consideration of grant of incentive increment, she would not be entitled for such benefit in view of Clause 6(vi) of G.O(Ms)No.37.

6. As rightly pointed out by the learned counsel for the petitioner, when the petitioner's claim for grant of incentive increment was earlier rejected on



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17.06.2020, the reason assigned therein was set aside as unsustainable. In view of the earlier decisions of this Court and by holding that no prior sanction was required for acquiring higher educational qualification, I had directed the second respondent to pass positive orders, granting incentive increment. The second respondent now seems to have developed their case by relying upon G.O(Ms)No.37 and G.O(Ms)No.116 and have now stated that since the scheme of incentive increment have been given up with effect from 10.03.2020, they are unable to consider the petitioner's claim. I am not in agreement with such reasoning adopted by the second respondent.

7. When the second respondent rejected the petitioner's claim for incentive increment by assigning some reason and such reason was set aside by this Court, the only consequential order that requires to be passed is to grant the incentive increment. I am unable to endorse the reasoning adopted by the second respondent by inventing a new ground, which cannot be sustained on its own also. The second respondent seems to have placed reliance on Clause 6(vi) of the Government Order in G.O.(Ms)No.37, which makes a reference to consideration of grant of incentive increment to Government servants, who have acquired higher educational qualification, but had not been sanctioned with advance increments, where orders have been issued for such grants.



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8. In the instant case, when the second respondent had rejected the petitioner's claim, this Court, by exercising its powers under Article 226 of the Constitution of India, had directed the second respondent to pass positive orders by setting aside the reasons for rejection in their earlier orders. This apart, when the second respondent had rejected the petitioner's claim on 17.06.2020, such a ground, that G.O(Ms)No.37 and G.O(Ms)No.116 is a bar for granting of incentive increment, was not raised, even though it was available to them at that point of time itself and hence raising such additional grounds now is opposed to the principles of acquiescence. Even otherwise, when the rejection order was set aside by this Court and positive orders were issued, I am unable to subscribe to the reasoning of the second respondent to assign other irrelevant and legally unsustainable grounds for the purpose of rejecting the petitioner's request. It is needless to point out that the order of this Court passed earlier, would supersede Clause 6(vi) of G.O(Ms)No.37 and therefore, on this ground also, the petitioner would be entitled to succeed.

9. For all the foregoing reasons, the impugned order, dated 13.08.2021, on the file of the second respondent is set aside. Consequently, there shall be a direction to the second respondent herein to pass orders, awarding incentive



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increment in favour of the petitioner herein for having acquired M.Phil., degree with effect from March 2008, within a period of four (4) weeks from the date of receipt of a copy of this order.

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

29.07.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Chief Educational Officer,
Thanjavur,
Thanjavur District.
- 2.The District Educational Officer,
Thanjavur,
Thanjavur District.



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M.S.RAMESH, J.

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