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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .Nos.12096 and 12739 of 2014

and

M.P. (MD) .Nos.1 and 2 of 2014

W.P. (MD) .No.12096 of 2014

T. Shanthi

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
Office of Director of School Education,
Chennai - 600 006.

3.The District Elementary Educational Officer,
Tiruchirappalli District,
Tiruchirappalli.

4.The Assistant Elementary Educational Officer,
Thiruverumbur Range,
Kattur, Trichy - 19.

5.The Secretary,
Boiler Plant Middle School,
Kailasapuram,
Trichy - 14.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Na.Ka.No.2261/A4/2014 dated 27.06.2014, quash the same as illegal and consequently direct the respondents herein to grant the first incentive increments for acquiring B.Ed., second incentive increments for M.A., and third incentive increments for M.Phil., on par with other similarly placed persons and as per the order dated 24.07.2013 made in W.P.No.11802 of 2013, within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.K.Appadurai

For R-1 to R-4 : Mr.N.Ramesh Arumugam,
Government Advocate (Civil Side).

For R-5 : Mr.S.Anwar Sameem



W.P. (MD) .No.12739 of 2014

T. Shanthi

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Secretary to Government,
Finance Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

3.The Director of School Education,
Office of Director of School Education,
Chennai - 600 006.

4.The District Elementary Educational Officer,
Tiruchirappalli District,
Tiruchirappalli.

5.The Assistant Elementary Educational Officer,
Thiruverumbur Range,
Kattur, Trichy - 19.

6.The Secretary,
Boiler Plant Middle School,
Kailasapuram,
Trichy - 14.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the fourth respondent in Na.Ka.No.2261/A4/2014 dated 27.06.2014, quash the same as illegal and consequently direct the respondents herein to consider the petitioner herein for promotion to the post of B.T. Assistant in the sixth respondent School as per the proceedings of the third respondent in Na.Ka.No.30130/ED1/2000 dated 26.12.2000, G.O.Ms.No.26 dated 02.02.2011 issued by the first respondent extending service benefits on par with similarly placed teachers in G.O.Ms.No.171 dated 18.08.2008 issued with the concurrence of Finance Department in G.O.No.20/DS(KM) 17 dated 01.02.2011, within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.K.Appadurai

For R-1 to R-5 : Mr.N.Ramesh Arumugam,
Government Advocate (Civil Side).



For R-6

: Mr.S.Anwar Sameem

COMMON ORDER

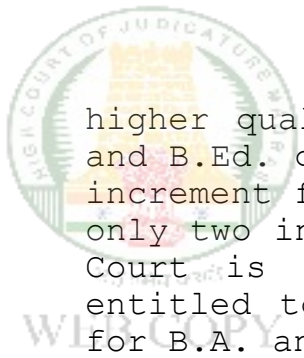
The Writ Petition in W.P.(MD).No.12096 of 2014 has been filed to quash the impugned order dated 27.06.2014 and consequently direct the respondents to grant first incentive increment for acquiring B.Ed., qualification, second incentive increment for M.A., qualification and third incentive increment for M.Phil., on par with other similarly placed persons and as per the order dated 24.07.2013 passed in W.P.No.11802 of 2013.

2. The brief facts of the case are that the petitioner belongs to Scheduled Caste community. She was appointed under G.O.Ms.No.301 dated 15.10.1999 as Assistant Secondary Grade Teacher. The said Government Order was passed to fill up the backlog vacancies belonged to Scheduled Community. The petitioner is qualified as B.A., B.Ed., M.A., and M.Phil. The petitioner was appointed as Assistant Secondary Grade Teacher. On 18.09.2001 at the time of appointment, the petitioner was having B.A., B.Ed., M.A., M.Phil. qualification. In the said G.O.Ms.No.301 it has been categorically stated that the appointments made under G.O.Ms.No.301 are not entitled to salary applicable to B.T. Assistants but eligible to salary applicable to Secondary Grade post and not entitled to any benefits, incentive increments for higher qualification and other increments. Later on when the representation was submitted by such appointees, the Government has relaxed the condition by issuing G.O.Ms.No.83 School Education (Elementary Education 1(2)) Department dated 28.04.2017. In the said G.O. it has been stated that only SC / ST graduate teachers appointed in the secondary grade teacher post between 1997 to 2000 are eligible for incentive increment for higher qualification notionally and the monetary benefits with effect from date of issuance of the said G.O. i.e. dated 28.04.2017.

3. Heard the Learned Counsel Mr.K.Appadurai for the petitioner, Learned Government Advocate (Civil Side) Mr.N.Ramesh Arumugam for respondents 1 to 5 and Learned Counsel Mr.S.Anwar Sameem for the 6th respondent

4. On perusal of the documents it is seen that the petitioner was appointed with the qualification B.A., B.Ed. Therefore as far as the incentive increment for B.A., B.Ed., is concerned, the petitioner was appointed in the Secondary Grade post with higher qualification. At the time of appointment, based on this basic qualification, the petitioner was appointment to the post of Secondary Grade. Therefore, this Court is of the considered opinion that the petitioner is not entitled to incentive increment for the said basic qualification of B.A., B.Ed.

5. As far as the incentive increment for M.A. is concerned, the petitioner is entitled to incentive increment, which is the



higher qualification. Since the petitioner is not entitled to B.A. and B.Ed. qualification, the petitioner may be entitled to incentive increment for M.Phil. degree. Any Government employee is entitled to only two incentive increments for the entire period. Therefore, this Court is of the considered opinion that the petitioner may be entitled to incentive increment for M.A. and M.Phil. only and not for B.A. and B.Ed.

6. However in the meanwhile, the Government G.O.Ms. No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020, has stated as under:

i. As a policy decision, the scheme of sanction of advance increment for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled/dispensed with immediate effect.

ii. The orders issued in the Government Orders fifth to eighth read above cancelled with immediate effect.

iii. The sanction of the advance increment for passing Account Test for Sub-Ordinate Officers-Part-I, as per rulings (3) &(4) under FR 31-A be dispensed with immediate effect.

iv. The advance increment for acquiring higher qualification already granted to Government Servants need not be effected any recovery.

v. All the departments of Secretariat/Head of the Departments are requested to take up a review on this issue with reference to the special / adhoc rules of the posts (entry to higher level) of the department concerned and to prescribe higher qualification to the posts where ever necessarily required, so as to improve the services of the department concerned.

vi. The cases of Government Servants who have acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increment for



passing higher qualification irrespective of the post held/degree acquired.

vii. No fresh/further proposals will be entertained by Personnel and Administrative Reforms Department on this issue, in future.

The G.O. states that no fresh / further proposals will be entertained by Personnel and Administrative Reforms Department on this issue, in future.

7. In the present case, the petitioner was not sanctioned and the petitioner has not received at all. Therefore, the respondents are directed to consider the claim of the petitioner in the light of G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 under Clause 6 and pass order within a period of six weeks.

8. The second Writ Petition in W.P.(MD).No.12739 of 2014 has been filed for promotion. The contention of the petitioner is that she is eligible to be promoted in the post of B.T. Assistant Science.

9. On perusal of the records it is seen that the School is having students strength of 210 and if the ratio of 1:40 is taken into account, then five B.T. Assistant posts are eligible to the school. Earlier, two B.T. Assistant Maths and two B.T. Assistant Science and one B.T. Assistant English was allotted to the School. From the two incumbents of B.T. Assistant Science, one was promoted, the other post was surrendered. The petitioner is claiming the surrendered post and consequently to promote in the said post. It is seen in the staff fixation order itself, one post has been shown as surrendered. On verifying the staff fixation order, for the academic year 2019-2020, for the class VI - 70 students, for class VII -102 students and for class VIII - 70 students are there. The School has already been allotted one B.T. Assistant English, two B.T. Assistant Maths and one B.T. Assistant Science along with a Middle School Headmaster post.

10. On perusing the staff fixation order, it is seen that the School is entitled to five posts and already five posts were allotted and one post was considered as surplus and that was taken back by the official respondents. The petitioner is claiming that only four posts is allotted to the school. Under G.O.Ms.No.525, the Headmaster post should also be taken into account along with the other post. In the present case, rightly the Middle School Headmaster post is taken into account. Therefore, this Court is of the considered opinion the School is being allotted five posts along with headmaster post which is in accordance to G.O. Ms. No. 525.

11. The contention of the School is that since the petitioner



submitted a representation to promote as B.T. Assistant, the School has submitted a proposal to the officials respondents to grant surrendered post again to the School. Since there is a claim from the petitioner, the school has no right to claim the surrendered post.

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12. Another reason is that the petitioner cannot claim the said post, since the petitioner can be considered for the post of B.T. Assistant (History), but the surrendered post is B.T. Assistant (Science). Even if it is granted, the post ought to be converted into Social Science. Therefore, this Court is of the considered view that the school is not eligible for the said post based on the students strength and hence the claim of conversion would not arise and consequently the petitioner is not entitled to promotion.

13. The contention of the petitioner is, since she is qualified, the petitioner is eligible to be promoted as B.T. Assistant. But promotion is not right but considering the candidate for promotion is a right. The petitioner cannot be granted promotion by creating a post, when the school is not eligible for the said post.

14. If any person is not getting promotion and stagnating in the same post, for more than 10 / 20 years, then that person is eligible for Selection Grade and Special Grade respectively. In this case, since the petitioner is stagnating in the Secondary Grade post, then eligible for Selection Grade and Special Grade. If the petitioner is not granted any Selection Grade and Special Grade, then the respondents shall grant the Selection Grade and Special Grade to the petitioner. With this direction this writ petition is disposed of.

15. In result, the Writ Petitions in W.P.(MD).No.12096 of 2014 and W.P.(MD).No.12739 of 2014 are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

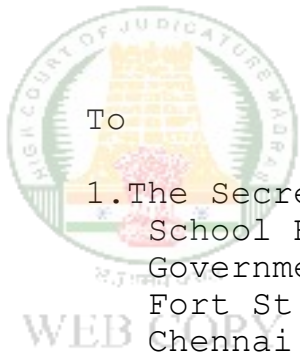
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/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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Fort St.George,
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5.The Assistant Elementary Educational Officer,
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Kattur, Trichy - 19.

+2 CC to M/s.K.APPADURAI, Advocate (SR-10696, SR-10697[F] dated
08/03/2022)

+1 CC to M/s.SPL.GP (SR-10949[F] dated 09/03/2022)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-11055[F] dated
10/03/2022)

**W.P. (MD) .Nos.12096 and 12739 of 2014
08.03.2022**

RD(04.04.2022) 7P 10C