



WA(MD)Nos.128 to 139 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.09.2022

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THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

W.A.(MD)Nos.128 to 139 of 2016
and
C.M.P.(MD)Nos.582 to 602, 752 & 763 of 2016

W.A.(MD)No.128 of 2016:

1.The Commissioner,
Corporation of Madurai,
Madurai – 2.

2.The Education Officer,
Corporation of Madurai,
Madurai – 2.

... Appellants / Respondents 3 & 4

/Vs./

1.A.Esther Emma Olive

...1st Respondent / Petitioner

2.The Secretary,
Department of School Education,
Secretariat, Chennai.

3.The Director of School Education,
Chennai – 600 006.

...Respondents 2& 3/Respondents 1&2



WA(MD)Nos.128 to 139 of 2016

PRAYER: Appeal - filed under Clause 15 of the Letters Patent, praying this Court, to set aside the order made in WP(MD)No.7802 of 2014 dated 15.12.2014 on the file of this Court.

For Appellants : Mr.R.Murali

For Respondents : Mr.Vellaichamy

for Mr.A.B.Prabhakar (For R1)

Mr.D.Sasikumar

Additional Government Pleader (For R2 & R3)

COMMON JUDGMENT

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

The subject matter in all these Writ Appeals pertains to the third Incentive Increment that is sought for by the teachers, who have acquired higher qualifications.



2. The issue involved in all these writ appeals is squarely covered by the Judgment of the Full Bench of this Court in **W.A.Nos.3674 of 2019 etc., batch**, in the case of **Government of Tamil Nadu, Represented by its Secretary, School Education Department, Fort St.George, Secretariat, Chennai – 600 009 and Others vs. R.Subramani** dated **29.04.2022**. The Full Bench of this Court, on considering the entire issue, has held as follows:

“11. By the aforementioned Government Order, it was clearly indicated that the maximum number of advance increments which a teacher could get under the scheme of incentive increments, shall be four in his/her entire service. When the maximum number of the advance increments which a teacher can get under the scheme of incentive increments under the aforesaid Government Order shall be four in his/her entire service, the writ petitioners cannot make a claim that they are entitled for the third set of incentive increment, taking advantage of the earlier G.O.Ms.No.746, Education dated 30.06.1989 allowing two more advance increments to one P.Asirvatham for acquiring M.Ed., qualification, as an exceptional case, in terms of the order passed by this Court. Similarly, the Post Graduate Teachers who possess higher qualification of M.Phil/Ph.D/P.G.D.T.E., cannot contend that they are also entitled to the third set of incentive increment by placing reliance upon G.O.Ms.No.



WA(MD)Nos.128 to 139 of 2016

1170, Education, Science and Technology Department dated 20.12.1993 and G.O.Ms.No.194, School Education (E2) Department dated 10.10.2006 that they have acquired the higher qualification, because, the Government, taking a policy decision, has issued the G.O.Ms.No.285, School Education Department dated 28.11.2007, that only two incentives (four increments) only may be granted to the teachers for the entire period of their service. The said Government Order reads as follows:-

“GOVERNMENT OF TAMILNADU

Abstract

School Education – Award of second incentive increment to Headmasters of Higher Secondary Schools with higher qualification (M.Phil/PhD/PGDTE) – Orders issued

School Education Department

G.O.Ms.No.285

Dated 28.11.2007

Read:

- 1. G.O.Ms.No.42 Education dated 10.01.1969.*
- 2. G.O.Ms.No.747 Finance (PC) Dated 18.08.1986.*
- 3. G.O.Ms.No.1170 Education Science and Technology Department dated 20.12.1993.*
- 4. G.O.Ms.No.194 School Education Department dated 10.10.2006*
- 5. Letter of Director of School Education No.105833/K2/2006 dated 23.11.2006.*

Order:



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WA(MD)Nos.128 to 139 of 2016

On the basis of the G.O.first read above, it has been ordered to allow two incentives to Teachers for acquiring higher qualifications during the entire period of their service.

2. For Post Graduate Teachers and Headmasters of Higher Secondary schools, in the G.O. second read above, one incentive has been allowed for their higher qualification of M.Ed from 01.04.1986.

3. As per G.O. third read above, it was ordered that Post Graduate Teachers may be granted one incentive (two increments) if they possess higher qualifications such as M.Phil/Ph.D/PGDTE as on 01.03.1993.

Later an amendment was issued to G.O.Ms.No. 1170 Education Science and Technology Department dated 20.12.1993 deleting the stipulated date 01.03.1993 and enabling all the Post Graduate Teachers to get the benefit, in the G.O.fourth read above.

4. The State President of Tamil Nadu Higher Secondary School Headmasters' Association has made a representation that the Tamil Nadu Government has ordered to grant to the Post Graduate Teachers working in Higher Secondary Schools one incentive for higher qualifications such as M.Phil/Ph.D/PGDTE and the same benefit may also be extended to the Headmasters of Higher Secondary Schools who had worked as Post Graduate Teachers in Higher Secondary Schools in earlier period and while all the categories of teachers are getting two incentives, the Headmasters of Higher Secondary schools alone are getting only one incentive



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WA(MD)Nos.128 to 139 of 2016

and if such benefit is denied, a situation will arise where teachers will be drawing Higher Basic pay than the Headmasters.

5. The opinion of the Director of School Education was sought regarding the demand of the Headmasters of Higher Secondary Schools. The Director of School Education has recommended to the Government that while serving as Post Graduate Teachers only one incentive was granted for M.Ed qualification and after being promoted to Headmaster post, a second incentive may be allowed to those Headmasters who passed M.Phil/Ph.D/ PGDTE.

6. As per the policy decision of the Government, two incentives (four increments) only may be granted to the teachers for the entire period of their service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed qualification during his service as Post Graduate Teachers and promoted to the Headmaster post and after the promotion as Headmasters, on acquiring M.Phil/Ph.D/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O.is ordered.

7. This order is issued with the concurrence of Finance Department vide its G.O.No.76645/Education 11/2007 dated 28.11.2007.

(By Order of the Governor)

Sd/- Secretary to Government”



12. *A perusal of the above order puts the issue beyond pale of doubt that as per the policy of the Government, a teacher for the entire period of his/her service shall be granted two incentives (four increments) only. Therefore, there cannot be any dispute regarding the fact that a Secondary Grade Teacher or B.T.Assistant or Post Graduate Teacher during the entire period of service as a teacher, is entitled to get only two incentive increments. Taking note of the same only, the Division Bench in W.A.No.1664 of 2016 dated 29.06.2018 (The Director of School Education and others v. V.Dhanapal) has categorically held that the acquisition of an M.Phil. qualification does not entitle a teacher for a third incentive increment, in view of G.O.Ms.No.1024, Education, Science and Technology Department, dated 09.12.1993 restricting the number of incentive increments to two and therefore, any teacher is not entitled to a third incentive increment. For better understanding, paragraphs 5 to 7 thereof are extracted hereunder:-*

“5. Mr.K.Karthikeyan, learned Government Advocate would contend that in view of G.O.Ms.No. 1024 dated 09.12.1993, which restricts the maximum number of incentive increments to two and in view of the fact that the respondent had already been granted two incentive increments, which is equivalent to four advance increments, the respondent will not be entitled to any further incentive increment during the period of



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WA(MD)Nos.128 to 139 of 2016

his service. A copy of the said G.O. dated 09.12.1993 has been produced before us, the relevant portion of the G.O. reads as follows:

“The maximum number of advance increments which a Teacher can get under the Scheme of incentive increments under this Government Order shall be four in his entire service”.

(one incentive increment is equivalent to two advance increments). The said position was clarified by the Government in G.O.Ms.285, School Education Department dated 28.11.2007, which reads as follows:

“As per the policy decision of the Government, two incentives (four increments) only may be granted to the teachers for the entire period of their service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed. qualification during his service as Post Graduate Teachers and promoted to the Headmaster Post and after the promotion as Headmasters, on acquiring M.Phil/Ph.D/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O. is ordered.”

6. Of course, the respondent in his affidavit filed in support of the Writ Petition has referred to certain Government Orders as well as the Orders of this Court granting a third set of incentive increments to certain



teachers. The said Government Orders have also been produced before us by the learned Government Advocate, those Government orders have been passed in particular cases, considering the peculiar circumstances of the case and the fact that the higher qualification in those cases are obtained, before 09.12.1993, i.e. the date on which the first G.O. i.e. G.O.Ms.No.1023 was passed restricting the number of incentive increments to a maximum of two, during the service of the teacher. Therefore, we do not think that those Government Orders which have been passed taking note of certain special circumstances could be taken as precedents to enable the respondent to claim an incentive increment, which he would not be entitled to otherwise.

7. The policy decision of the Government has been consistent to the effect that the teachers who acquire higher qualifications can be granted two incentive increments equivalent to four advance increments, during the entire tenure of their service. There is no dispute regarding the fact that the respondent has been awarded two incentive increments for acquiring B.Ed. and M.A. qualifications. Therefore, he cannot, as a matter of right, claim the third set of incentive increments for having obtained M.Phil qualification. We are therefore, unable to sustain the order of the learned Single Judge directing payment of third incentive increment to the respondent.”

13. In the light of the above, we are of the considered opinion that the view taken by the Division Bench in W.A.No.



WA(MD)Nos.128 to 139 of 2016

*1664 of 2016 dated 29.06.2018 (The Director of School Education and others v. V.Dhanapal) that a teacher shall be granted only with two incentive increments, equivalent to four advance increments, for the entire period of his/her service, **holds good** and the view taken by the Division Bench in W.A.(MD) Nos.701 and 769 of 2015 etc., dated 15.07.2015 (The Director of School Education and others v. S.Amalraj) and the view taken by another Division Bench in W.A.(MD) No.867 of 2014 dated 18.09.2014 (The Director of School Education and another v. N.Balasoundari and another) that a teacher is entitled to the third set of incentive increment, **cannot be said to be a good law. We answer the reference accordingly.***

3. The learned counsel appearing on behalf of the first respondents / writ petitioners brought to the notice of this Court G.O.(Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020.

4. On carefully going through the G.O.(Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, we find that the said GO pertains to a clarification that was issued for G.O.(Ms)No. 37, Personnel and Administrative Reforms (FR-IV) Department, dated



WA(MD)Nos.128 to 139 of 2016

10.03.2020. By virtue of G.O.(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020, entire concept of Incentive Increment was done away with. Therefore, G.O.(Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, that was brought to the notice of this Court by the learned counsel appearing for the first respondents / writ petitioners does not have any impact in the present case and the present case is squarely covered by the Judgment of the Full Bench of this Court.

5. In view of the above, all these Writ Appeals are allowed in terms of the Full Bench Judgment referred to supra. No costs. Consequently, connected Miscellaneous Petitions are closed.

(J.N.B.,J.) (N.A.V.,J.)
28.09.2022

Index : Yes/No
Internet : Yes
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WA(MD)Nos.128 to 139 of 2016

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

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To:

- 1.The Secretary,
Department of School Education,
Secretariat, Chennai.
- 2.The Director of School Education,
Chennai – 600 006.

Common Judgment made in
W.A.(MD)Nos.128 to 139 of 2016
and
W.P.(MD)Nos.6832 & 8472 of 2006

Dated
28.09.2022