



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.02.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

CONT P(MD)No.1880 of 2021

G.Maria Selvarani

... Petitioner/Petitioner

vs.

D.Usha Santha Joy,
District Educational Officer,
Tuticorin, Tuticorin District.

... Contemnor/2nd Respondent

PRAYER: Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for willful disobeying and not complying with the order of this Court, dated 26.11.2020, in W.P. (MD)No.11046 of 2015.

Prayer in WP(MD) . 11046/ 2015 :

Writ Petition is 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 the impugned proceedings issued by the 4th respondent herein vide G.O.Ms.No.944 Education (D2) Department dated 29.07.1989 and consequential proceedings issued by the 2nd respondent District Educational Officer vide Na.Ka.No.1299/Aa4/15 dated 18.05.2015 quash the same and further direct the 2nd respondent herein to sanction one set of incentive increment to the petitioner for acquiring B.Ed degree w.e.f 27.12.2011.

(Prayer amended vide Court order dated 28.03.2016 in WMP.3874/16)

For Petitioner : Mr.A.Ajith Geethan

For Respondent : M/s.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This contempt is filed alleging willful disobedience of the order of this Court passed in W.P.(MD)No.11046 of 2015 dated 26.11.2020.

2.The Writ Petition W.P.(MD)No.11046 of 2015, is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 18.05.2015 and to direct the second respondent to sanction one set of incentive increment to the petitioner for acquiring B.Ed., degree with effect from 27.12.2011. Thereafter, the petitioner has amended the prayer to quash the impugned G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 and consequential proceedings, dated 18.05.2015 and to direct the second



respondent to sanction one set of increment for acquiring B.Ed., degree with effect from 27.12.2011.

3. The brief facts of the case are that the petitioner is working as Secondary Grade Teacher in third respondent School, which is a minority aided Private School. The petitioner acquired B.Ed., degree by taking permission from the Headmaster of the School. However, the petitioner has not taken permission from the educational authority. The petitioner was appointed as Secondary Grade Teacher on 03.01.2001 and the same was approved by the educational authority. The petitioner was qualified Diploma in Teacher Education (D.T.Ed.) and then acquired B.A., (English) in December 2008 and B.Ed., in December 2011. The third respondent School granted ratification on 28.02.2015 for the higher studies and submitted necessary proposal to the second respondent requesting and sanctioning one set of incentive increment for obtaining higher qualification, i.e., B.Ed., degree. The DEO returned the proposals on 18.05.2015, denying incentive increment stating the petitioner has not obtained prior permission for obtaining higher qualification.

4. The contention of the petitioner is that there is no necessity to get any permission either from the School management or from the educational authorities for obtaining higher studies, because the higher studies, was done through distance education mode and not under regular stream. The petitioner contention that since he has obtained higher qualification through distance education it will not affect the students in the third respondent School. Moreover, the petitioner is employed in third respondent School, it is a private aided Minority Institution has also ratified the higher qualification and therefore, the official respondents have no justification denying incentive increment. Therefore, the petitioner filed the Writ Petition seeking incentive increment.

5. The respondent filed a counter affidavit stating that the petitioner ought to have obtained prior permission as stated in G.O.Ms.No.944, Education Department, dated 29.07.1989. Thereafter, the petitioner filed an amendment petition and amended the prayer.

6. The contention in the amendment petition is that the respondents filed the counter affidavit in a similar Writ Petition in W.P.(MD)No.14085 of 2015 by quoting the above said G.O. 944. On perusal of the G.O, the Director of School Education seems to have approached the Government seeking to delegate the powers to permit the staffs working in Private Schools to join correspondence courses. Since similar delegation of power was granted in case of Government servants. Thereafter, the Government blindly issued the said G.O. 944. The Government may have power to delegate to the



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Heads of Department in respect of Government service. However, in respect of staff working in aided Schools, the State Government is not the employer and no such power is vested on the Government under the Tamil Nadu Recognized Private Schools (Regulation) Act. Under Section 51 of the Act, the State Government is empowered to delegate the power vested on them to any authority. But the power to permission to join correspondence course in respect of Aided School Staff it is not vested with the Government. As per Section 18 (b) of the Act, the School Committee alone is the competent to join the staff, fix their pay and define their duties and conditions of service. The petitioner being employed in third respondent School which is a private aided minority institution, need not constitute School Committee and the powers of the School Committee defined under the Act vest with educational agency in respect of minority educational institutions. The State Government by the impugned G.O. 944 has curtailed the rights of the School Committee as well as the educational agency.

7. In W.P.No.4478 of 1974, this Court vide order, dated 17.12.1975, has held that Sections 8(1)(a), 11(1)(b), 12(1), 14 to 18, 21(2) to 26, 31 to 33, 39(4), 41 to 45 and Rules 7, 9 except Clauses (e) and (k) of sub rules (2) Rules 10 to 14, 16 to 18 and 22 to 24 inapplicable to minority institutions. In an Appeal filed in SLP (Civil) Nos.1521-56 and 3042-91 of 1979, the Supreme Court, vide order, dated 04.03.2003, set aside the above order and remitted the matter again for fresh consideration and also directed to maintain status quo, until High Court decide it afresh.

8. When the batch of Writ Petitions came up for hearing, the State Government filed affidavit that the present law will be replaced by new one and the Division Bench disposed the batch of Writ Petitions with a specific direction to maintain the status quo as on date of earlier judgment till new comprehensive Act comes into force. Therefore, the above said sections are not applicable to the minority institutions. Therefore, the petitioner sought to quash the impugned, G.O.Ms.No.944 and the consequential prayer. This Court, vide order, dated 26.11.2020, has quashed the G.O.Ms.No.944 and directed to grant incentive increment against which the respondent appellant has filed a Writ Appeal in W.A.(MD)No.819 of 2019 and the same was allowed and remanded back to the Writ Court to consider the issue by G.O.Ms.No.944.

9. The respondents have filed a counter affidavit stating that the Government has preferred review application REV.APPL (MD).34 of 2021 against the order passed in the writ petition and the same is pending. It is seen from the records that the petitioner was not paid any incentive increments and the Government has issued another



G.O. wherein the granting of incentive increments was cancelled in the Government has issued G.O.Ms. No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020. In the said G.O. it has been stated in Clause 6 sub clause (vi) as under:

"The person 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 increments for passing higher qualification irrespective of the post held / degree acquired."

In sub clause (vii) it has been stated as under:

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

10. However, any candidate was not granted any incentive increment and no orders are passed to grant incentive increment, then, the candidate is not entitled to under the clause stated supra. However, since the respondent / contemnor has preferred review application in REV.APPL (MD).34 of 2021 to decide the entire issue, this Court is of the considered opinion that there is no willful disobedience as of now. Therefore, this Court is closing this Contempt Petition with the liberty to the petitioner to reopen after the disposal of the review application.

11. Hence, the Contempt Petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The District Educational Officer,
Tuticorin, Tuticorin District.

+1 CC to M/s.SPL.GP (SR-3985[F] dated 03/02/2022)

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MGJ(18.03.2022) 5P 3C