



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 03.03.2022

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CORAM:

THE HON'BLE Mrs JUSTICE S.SRIMATHY

W.P. (MD)No.4069 of 2017

and

WMP (MD)No.3229 of 2017

Sathya

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Omanthurar Government Estate,
Anna Salai,
Chennai - 600 006.

2.The Director of School Education,
College Road,
Chennia-600 006.

3.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

4.The Head Master,
Srivilliputtur Thiru.Vi.Ka.Municipal,
Srivilliputtur,
Virudhunagar District.

... Respondents.

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 15.02.2017 issued by the 4th respondent and quash the same.

For Petitioner : Mr.P.T.Ramesh Raja

For R1 to R3 : Mr.V.Om Prakash
Government Advocate (Civil Side)

For R4 : Mr.P.Athimoola Pandian



ORDER

The petitioner has filed this writ petition for challenging the impugned notice issued by the 4th respondent, dated 15.02.2017.

2.The case of the prosecution in brief:-

(i) The petitioner was appointed as B.T Assistant (Science) on 07.03.2007 at the Government High School, Chincona Coimbatore District, through Teacher Recruitment Board (TRB). At the time of appointment, the petitioner was possessing M.Sc., & B.Ed., as educational qualification and pursuing his final examination in M.Phil. Subsequently, on 18.04.2009, the petitioner was transferred to the fourth respondent School. There he was given first incentive increment for acquiring the higher qualification of M.Sc., from the date of his joining. The above said incentive increment was issued as per GO.Ms.No.42 Education Department, dated 10.01.1969. In the month of July, 2007, he completed his M.Phil., degree and becomes eligible for the second incentive increment. In spite of repeated representations to sanction incentive for acquiring M.Phil. degree, it was not paid to him. Thereafter, the petitioner was given second incentive, during the year 2013 along with arrears. On 15.11.2016, the fourth respondent has issued the recovery order by relying upon the GO.Ms.No.18 Home Department, dated 18.01.2013. Wherein, it has been stated that from 10.07.2007 to 18.01.2013, the petitioner has not entitled to incentive increment for M.Phil. degree for first time and directed him to repay the arrears amount for the above said period. Originally, the respondents should have granted incentive increments from the date of passing M.Phil. degree and not from the date of issuing Government order. Hence, the petitioner filed a W.P. (MD)No.24613 of 2016 before this Court and the same was disposed of by this Court, dated 22.12.2016.

(ii) Instead of providing an opportunity to the petitioner as per the above said order, the fourth respondent, once again, issued impugned notice dated 15.02.2017, and directed him to repay the incentive increment of Rs.99,637/-, which was paid to him from the period 10.07.2007 to 18.01.2013. Challenging the same, the petitioner has come forward with the present petition.

3.It is seen that as per the clarification issued by the first respondent through Letter No.129, School Education [Pa.ka.5(2)]2013-1, dated 17.07.2013, on the date of issuance of G.O.Ms.No.18, the amount shall be sanctioned. Without following the above said clarification, the fourth respondent School has collected the arrears amount, which was paid to the petitioner. Thereafter, impugned order was issued to recover the above said amount from the petitioner. The petitioner challenged the above said recovery order



in W.P.(MD)No.245 of 2016 and this Court has disposed of the same vide order dated 22.12.2016, by giving directions to the respondents, which is extracted hereunder:-

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"....."

5. Since no decision has been taken by the respondents and that there is no cut-off date fixed in the said G.O., it is open to the respondents to take decision as to whether the benefit of G.O.No.18, should be given from the date of acquiring M.Phil. qualification or from the date of issuance of G.O., after affording an opportunity of being heard to the petitioner and thereafter, pass suitable order in accordance with law expeditiously."

4. This Court has directed the respondents to take decision as to whether the petitioner is entitled incentive increment from the date of possessing M.Phil. degree or from the date of issuance of Government Order. The respondents after giving opportunity to the petitioner, based upon the clarification, has passed the present impugned order. The petitioner has challenged the same, stating that the petitioner was not given an opportunity and it is not the mistake of the petitioner. The contention of the petitioner that there is no cut off date prescribed in the GO.MS.No.18.

5. The third respondent has filed counter affidavit stating that the clarification letter has clearly spelled out the cut-off date. Moreover, the fourth respondent, ought to have sought clarification with regard to the issuing the applicability of the increments before sanctioning the amount. The fourth respondent submitted before this Court that based on the GO.Ms.No.18, the said proposal was submitted before the concerned authorities.

6. Heard Mr.P.T.Ramesh Raja, the learned counsel appearing for the petitioner, Mr.V.Om Prakash the learned Government Advocate (Civil Side) appearing for the official respondents 1 to 3 and Mr.P.Athimoola Pandian the learned counsel for the fourth respondent.

7. The contention of the learned counsel for the petitioner is that he was not granted any opportunity before issuance of present impugned order. This Court is of the considered view that even if such opportunity is given, it will be an empty formality because the respondents already clarified through letter dated 22.12.2016 (stated supra). Moreover, this Court is of the considered opinion that if any G.O is issued, if there is no cut-off date prescribed in the G.O., then it should be the date of issuance of above said G.O. If there is specific mention of applicability retrospectively, then alone the G.O. is applicable retrospectively. The petitioner has misunderstood the G.O.Ms.18 and hence the present confusion. This Court is passing the following orders:-



(i) The fourth respondent is directed to collect the amount in easy installment from the petitioner.

(ii) The fourth respondent shall pay a sum of Rs.2,000/- to the Swami Sivanandha Sevarshram Campus, Austin Patti Road, Thopur, Madurai for giving wrong proposal.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dss

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

1. The Secretary to Government,
School Education Department,
Omanthurar Government Estate,
Anna Salai, Chennai - 600 006.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.
4. The Head Master,
Srivilliputtur Thiru.Vi.Ka.Municipal,
Srivilliputtur,
Virudhunagar District.

Copy to:

The Officer in Charge,
Swami Sivanandha Sevarshram Campus, Austin Patti Road, Thopur,
Madurai



+1 CC to M/s.K.SATHISH KUMAR, Advocate (SR-9907[F] dated 03/03/2022)

+1 CC to M/s.SPL GP (SR-10203[F] dated 04/03/2022)

W.P. (MD) No. 4069 of 2017

and

WMP (MD) No. 3229 of 2017

03.03.2022

MGJ(30.03.2022) 5P 8C