



W.P.(MD)No.12285 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.11.2022

PRONOUNCED ON : 06.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12285 of 2016

and

W.M.P.(MD)Nos.9366 of 2016 and 1655 of 2017

Shanthi

... Petitioner

vs.

1.The Regional Accounts Officer (Audit),
School Education Department,
Madurai-2.

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

3.The Head Master,
Corporation Higher Secondary School,
Anna Nagar,
Thanjavur District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 1st respondent in Na.Ka.No.724/A8/2015, dated 05.2015 and consequential order of the 3rd respondent in Na.Ka.No.35/2016, dated 27.06.2016 and to quash the same as illegal, consequently, to direct the respondents to sanction incentive increments for possessing M.Phil in Physical Education, to the petitioner in the light of the G.O.Ms.No.324, Education, Science and Technology Department, dated 25.04.1995.

For Petitioner : Mr.J.Lawrance
For Respondents : Mr.S.Kameswaran
Government Advocate (Civil side)

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order of the 1st respondent in Na.Ka.No.724/A8/2015, dated Nil. 05.2015 and consequential order of the 3rd respondent in Na.Ka.No.35/2016, dated 27.06.2016 consequently, to direct the respondents to sanction incentive increments for possessing M.Phil. in Physical Education, to the petitioner in the



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light of the G.O.Ms.No.324, Education, Science and Technology Department, dated 25.04.1995.

2. The petitioner acquired B.A (Economics) in the year 1991, M.PED., Degree in Physical Education in 1993, M.PED., in 1997 and M.Phil. Degree in 2007. The petitioner was selected for the Post of Physical Education Teacher on the basis of employment seniority after following communal and priority rotation and he joined as Physical Education Teacher in the Government Higher Secondary School. Then his service was regularized. The minimum qualification for the post of Physical Education Teacher is Bachelor Degree with B.PEd., or B.P.E.S. or M.P.E.S. but the petitioner is possessing higher qualification of M.Phil. than the minimum qualification required for the post of Physical Education Teacher. The petitioner requested the 3rd respondent to sanction incentive increment for M.Phil. Degree.



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3. The contention of the petitioner is that as per G.O.Ms.No.42, Education Department, dated 10.01.1969, the petitioner is eligible for incentive increment for M.Phil. On 20.03.2008, the 3rd respondent had sanctioned one incentive increment for M.Phil., qualification and was receiving the same till June 2016. However, there was an audit objection and hence the 1st respondent, vide proceedings, dated .05.2015, passed the impugned order stating the incentive increment for M.Phil., qualification is not in accordance to the Government orders. Thereafter, the 3rd respondent cancelled the incentive increment for M.Phil., stating the sanction for the said degree is improper. Further, the 3rd respondent has directed the petitioner to repay the amount from 20.03.2008 to June 2016. The respondents have not granted any opportunity to the petitioner before passing the order. As per G.O.Ms.No.324, dated 25.04.1995, the Physical Education Teachers who have acquired M.Phil., degree in Physical Education are eligible for the incentive increment for higher qualification but without adverting to the same, the respondents have passed the impugned orders, hence, the



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petitioner prayed to set aside the impugned order and confer the incentive increments to the petitioner.

4. The learned Government Advocate appearing for the respondents submitted that G.O.Ms.No.324, dated 25.04.1995, was passed after deleting the conditions that was prescribed in G.O.Ms.No.624, Education, dated 13.07.1992. The sanction of the incentive increments would be considered when the subjects in the higher secondary syllabus are relevant. In respect of Physical Education Teachers, they are eligible for the incentive only in Physical Education. Since the petitioner was having B.A.(Economics), degree, the petitioner is not eligible for the same. Hence, the said audit objection is absolutely right and sustainable in law and hence prayed to dismiss the writ petition.

5. Heard Mr.J.Lawrance, learned Counsel appearing for the petitioner and Mr.S.Kameswaran, learned Government Advocate appearing for the respondents.



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6. It is an admitted fact that the petitioner was qualified as B.A. (Economics)., B.PED., M.P.E.S. and M.Phil., degree at the time of joining the service. Now the petitioner is claiming incentive increment for M.Phil., degree alone. The claim of the petitioner is that the Government employee is entitled to two incentive increments in their entire service and the petitioner is claiming increment only for M.Phil., degree, which would be the only increment to the petitioner. The petitioner will not be able to get any second incentive increment. Hence, the petitioner is claiming to consider the M.Phil., and grant the incentive increment, as per G.O.Ms.No.324, dated 25.04.1995. The objection raised by audit is that the petitioner has studied B.A.(Economics). but M.Phil. is for Physical Education, since the subject is different the petitioner is not eligible. The relevant portion of the G.O.Ms.No.324 is extracted hereunder:

“5. The Government accordingly direct that,

- i. The conditions in (i) to (iii) in para 3 of G.O.Ms.No.624 Education dated 13.07.1992 is deleted.*
- ii. For the sanction of incentive increments the subjects in the Higher Secondary Syllabus shall be the relevant subjects*



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- iii. *In respect of the teachers in Physical Education they are eligible for the incentive for higher qualification only in Physical Education*
- iv. *Those order will take retrospective effect from 17.09.1986 to cover past cases*
- v. *The teacher who have acquired higher qualification in subjects other than higher secondary syllabus shall not be eligible for any incentive increment.”*

On considering the rival submissions, this Court is of the considered opinion that the petitioner had studied B.Com. Then had studied M.P.E.S. (physical education) and thereafter had studied M.Phil. in physical education. If the petitioner had studied B.Com. then straight away studied M.Phil. in Physical Education, then the objection of the audit is right. Since the petitioner had studied M.P.E.S. (physical education), thereafter studied M.Phil. (physical education) then the petitioner is entitled to incentive increment for M.Phil.

7. The learned Government Advocate appearing for the respondents submitted that G.O.Ms.No.177, School Education, dated 13.10.2016, it has been categorically stated that the employees would be getting a second incentive



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increment from the date of the issuance of the G.O.Ms.No.177, School Education, dated 13.10.2016. However, the learned Counsel for the petitioner submitted that it says that the 2nd incentive increment would be eligible from the date of issuance of order and not for the 1st incentive increment, since the petitioner is claiming the 1st incentive increment for M.Phil., degree, the said G.O. is not applicable and only G.O.Ms.No.324, dated 25.04.1995, is applicable. Therefore, this Court is of the considered opinion that the petitioner is eligible as per G.O.Ms.No.324, dated 25.04.1995. The relevant portion of G.O.Ms.No.177 is extracted hereunder:

“2) பணியாளரின் மொத்தப் பணிக்காலத்தில் இரு ஊக்க உயர்வுகள் (நான்கு ஊதிய உயர்வுகள்) மட்டுமே வழங்கப்பட வேண்டும்.

3) ஏற்கனவே ஒரு ஊக்க ஊதிய உயர்வு பெற்று வரும் உடற்கல்வி ஆசிரியர்களுக்கு தங்களின் உயர்கல்வி தகுதிக்காக இதர ஆசிரியர்களுக்கு உள்ளது போன்று இரண்டாவது ஊக்க ஊதிய உயர்வு அரசாணை வெளியிடப்படும் நாள்தொட்டு வழங்கப்பட வேண்டும்.

4) உடற்கல்வி ஆசிரியர், உடற்கல்வி இயக்குநர் நிலை-I மற்றும் உடற்கல்வி இயக்குநர் நிலை- II ஆகிய பணிகளுக்கான அடிப்படைக் கல்வித் தகுதியினைவிட உயர்கல்வி தகுதி பெற்றிருப்பின் ஊக்க ஊதிய உயர்வு வழங்கப்பட வேண்டும்.”



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8. On perusal of the said G.O. under clause (iii) it has been specifically stated that if the teacher is already getting one incentive increment, then teacher would be entitled to second incentive increment from the date of the issuance of the G.O. Ms. No. 177. Earlier the physical education teacher was granted only one incentive increment, thereafter on repeated demands the government had taken a policy decision to grant second set of incentive increments for physical education teachers also, but the second set of incentive increment is applicable only from the date of G.O. The respondents have misconstrued the said G.O., especially the audit has misconstrued the said G.O. and has submitted that the G.O. is applicable from the date of the G.O. In the present case the respondents have already conferred the benefits from 2001 based on G.O. Ms. No. 324 and now cannot turn around and deny the benefits. Therefore, this Court is of the considered opinion that the petitioner is eligible as per G.O. Ms. No. 324, dated 25.04.1995.



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9. However, the State Government has issued G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 read with G.O.Ms.No.116 Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, wherein it has cancelled the incentive increment for acquiring higher qualification. The said G.O.'s cancelled the granting of incentive increment for the persons who have acquired the qualification from the date of the G.O. i.e. 10.03.2020. However as far as for the persons already granted the G.O. has stated certain conditions under clause 6 and the relevant portion is extracted hereunder:

“6. For the forgoing reasons, the Government have taken a decision to cancel / dispense with the scheme of sanction of advance increment for acquiring higher qualification and for passing Account Test for Sub ordinate Officers Part-I as per rulings (3) & (4) under FR 31-A and also to cancel the orders issued in Government Orders fifth to eighth read above. Accordingly, the Government issue the following directions:-

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



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ii. The orders issued in the Government Orders fifth to eighth read above be 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 the 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 increments 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."



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In the said G.O. the candidates who had already received the incentive increments were not denied. However the department ought to obtained concurrence from the Finance Department, if the incentive increment were not disbursed. In the present case the petitioner was receiving the incentive increment from 2001 and the respondents had stopped suddenly based on audit objection and ordered for recovery, hence the petitioner is protected under Clause 6 Sub-Clause (vi) G.O.Ms.No.37 and 116.

10. Therefore, this Court is of the considered opinion that the petitioner is entitled to incentive increment under G.O.Ms.No.324 Education, Science and Technology Department dated 25.04.1995. The impugned order is quashed and the respondents are directed to return the deducted amount, if any. The respondent are directed to continue to pay the incentive increment.



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11. For the above said reasons, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

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Internet : Yes

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To

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