



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2022

DELIVERED ON : 19.05.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.8637 of 2016

and

W.M.P. (MD) .No.6906 of 2016

WEB COPY

T.Anitha Poongani

... Petitioner

Vs

1.The District Elementary Educational Officer,
Karur,
Karur District.

2.The Assistant Elementary Educational Officer,
Kulithalai,
Karur District.

3.The Correspondent,
CSI Primary School,
Kulithalai - 638 656,
Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in Athi.Mu.No.1643/A1/2015 dated 23.09.2015 and quash the same and consequently direct the respondents herein to award incentive increments to the petitioner for his B.Com, M.Com and B.Ed degree with effect from date of passing B.Ed degree with all attendant benefits and privileges.

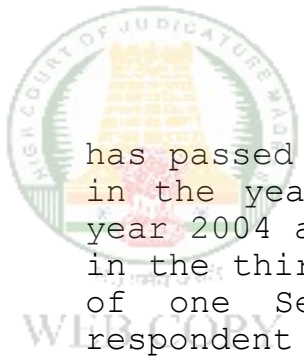
For Petitioner : Mr.T.Pon Ramkumar,

For R-1 and R-2 : Mr.V.Omprakash,
Government Advocate (Civil Side).

For R-3 : No Appearance

O R D E R

This Writ Petition has been filed to quash the impugned order dated 23.09.2015 and consequently direct the respondents to award incentive increment to the petitioner for B.Com. and M.Com. and B.Ed. degree with all attendant benefits.



2. The brief facts of the case are that the petitioner has passed B.Com. in the year 1999, M.Com. (Co-operative Management) in the year 2001. Then passed Diploma in Teacher Education in the year 2004 and was appointed as Secondary Grade Teacher on 07.09.2006 in the third respondent School in the vacancy caused due to transfer of one Secondary Grade Teacher namely P.Sumathi. The first respondent approved the appointment vide proceedings dated 04.01.2007 with effect from 07.09.2006 and released grant-in-aid. The petitioner sought permission to study B.Ed. degree and by proceedings dated Nil .2013, the second and third respondents has granted permission to study B.Ed. and the petitioner has passed B.Ed., degree in Indira Gandhi National Open University.

3. The contention of the petitioner is that if the teacher passed B.Ed., degree, then the teacher is eligible to get two incentive for M.Com. and B.Ed. In the month of April 2015, the petitioner applied to the second respondent through third respondent for providing incentive increment for B.Com. M.Com., B.Ed., degree. Since there was no response from the respondents, the petitioner submitted representation to the second respondent herein to award incentive increments for B.Com., M.Com. and B.Ed. The contention of the petitioner is that for the Secondary Grade Teachers who were appointed like that of the petitioner will be granted one incentive increment for higher qualification and second increment for B.Ed. degree. However the second respondent has passed the impugned order dated 23.09.2015 rejecting the request and returned the proposal stating that there is no Government Order to grant incentive increment for B.Com. and M.Com. Aggrieved over, the present Writ Petition has been filed.

4. The contention of the petitioner is that the third respondent has granted incentive increment for Secondary Grade post who are having M.Sc. (CS & IT) along with B.Ed., degree. Therefore, the petitioner ought to be considered for granting incentive increment for B.Com. M.Com. and B.Ed., degree. The learned counsel for the petitioner submitted that the issue is considered by the Division Bench in W.A.No.191 of 2019 dated 23.01.2019 wherein the contention of the official respondents in that case is that the incentive increment prescribed by the Government for Higher Education is based on the subjects of the Primary Schools. Accordingly, B.Com., M.Com. are not prescribed as subjects in Primary School. But the Court has held that such teachers are entitled to two incentive increment for acquiring B.Ed., in the year 1998 and two more incentive increments for acquiring M.Ed., in the year 2000, which are in accordance with the Government Orders. Just because the petitioner acquired additional in B.Com., degree that does not mean that he is not been entitled to incentive increment along with B.Ed., qualification. The reasoning of the Government is wrong and the Division Bench has directed the Government to grant incentive increment to B.Ed., alone.

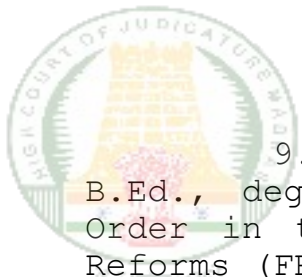


5. The respondents have not filed any counter but relied on Government Orders and the impugned order.

6. Heard Mr. T.Pon Ramkumar, learned counsel for the petitioner and Mr. V.Omprakash, learned Government Advocate (Civil Side) for the first and second respondents and there is no appearance on behalf of the third respondent.

7. It is seen from the records that the petitioner has passed B.Com., M.Com. in the year 1999 and 2001 and has joined the service on 07.09.2006. Since she has completed B.Com., and M.Com. prior to the service, the same cannot be taken into consideration to grant incentive increment. Therefore, the claim for granting incentive increment for B.Com., and M.Com. ought to be rejected on this ground. The respondents have considered the claim of the petitioner for B.Com. and M.Com. and has stated that there is no Government Order for granting any incentive increment for B.Com., and M.Com. The government order has declined to grant incentive increment for B.Com., and M.Com. since the Secondary Grade Teachers are taking class for the Students studying from Standard 1 to 5. Admittedly, the standards 1 to 5 is not having any Commerce course. However the petitioner submitted that the petitioner is taking standards for 6 to 8 and has relied on the subject particulars of Standard 6 and 8. Even for standards 6 to 8 there is no subject as commerce course. The Commerce course is a subject prescribed in Higher Secondary i.e. plus 1 and plus 2 and the petitioner is not taking class for the Higher Secondary standards. The petitioner submitted that the incentive increment is granted with a view to keep the employees vibrant and active during the fag end of their service. But the petitioner has misunderstood the granting of incentive increment. The incentive increment for higher education is granted to motivate the teachers to acquire additional qualification so that the students would be benefited. In the present case the qualification of B.Com. and M.Com. is not benefiting the students studying in the standards 6 to 8 since they are not having such "Subject Course" at all. The subjects prescribed for 6 to 8 are Tamil, English, Science, Social Science and History. Therefore the petitioner is not entitled to any incentive increment for B.Com. and M.Com. for the above stated two reasons.

8. It is seen from the records that the petitioner has completed B.Ed., in April 2015 and the same was acquired after joining the service. However, the impugned order is silent about the entitlement of incentive increment for B.Ed., degree. As per G.O.Ms.No.42 Education Department dated 10.01.1969, any Secondary Grade Teacher, if they have acquired higher qualification of B.T. or B.Ed. degree of any University in the State or degrees of other Universities recognized as equivalent to the degree of B.T. or B.Ed., degree of the University of this State are eligible for incentive increment. Therefore, the petitioner is entitled to incentive increment for B.Ed., alone.



9. Even if it is stated that the petitioner is entitled to B.Ed., degree, the Government has issued a subsequent Government Order in the year 2020 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, where it has been stated that granting of incentive increments for acquiring higher qualifications are stopped or cancelled from the date of issuance of G.O. Ms. No. 37. However, the contention of the petitioner is that the said G.O. is applicable from the date of the G.O. and it is not applicable retrospectively. The relevant portion of G.O. Ms. No. 37 under clause 6 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

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.

10. It has been stated that if any incentive increment is not granted until now, then, the candidate is not entitled to, since the issuance of incentive increments is cancelled by G.O.Ms.No.37. The Government Order also clarifies two situations one is "if already orders issued by the administrative department" then the same would be considered after obtaining concurrence from the Finance Department and second is "if no orders are issued by the administrative department" then the employee is not entitled to the benefits. Hence both the situations are clarified including retrospective effect of the order. In the said Government Order, the Government has clearly stated that if any orders are passed by the administrative department, then the same ought to be considered after obtaining concurrence from the Finance Department. In the present case there is no order passed for granting any incentive increment passed till date and the incentive increments were not paid to the petitioner. Hence based on the G.O.Ms.No.37, the petitioner is not entitled to incentive increment for B.Ed., also. Therefore based on all angles, the petitioner is not entitled to the incentive increment for B.Com., and M.Com. Even the petitioner is eligible for B.Ed., based on G.O.Ms.No.37, the petitioner is not entitled to B.Ed., also.

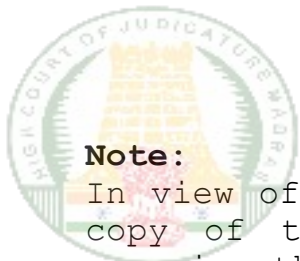
11. Hence the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar
(Vacation Officer)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)



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 District Elementary Educational Officer,
Karur,
Karur District.

2.The Assistant Elementary Educational Officer,
Kulithalai,
Karur District.

+1 CC to M/s.SPL.GP. (SR-18832[F] dated 13/04/2022)

+1 CC to M/s.T. PON RAMKUMAR, Advocate (SR-23747[F] dated
19/05/2022)

W.P. (MD)No.8637 of 2016
19.05.2022

RK(28/05/2022) 6P 5C