



WEB COPY



WA No. 1202 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. No. 1202 of 2023
and
C.M.P. No. 12247 of 2023

1. The Principal Secretary to Government
Education Department
Secretariat, St. George Fort
Chennai - 600 009

2. The Commissioner/Director
Secondary Education Department
Nungambakkam
Chennai - 600 006

3. The Joint Director (Technical)
Secondary Education Department
Nungambakkam
Chennai - 600 006

4. The Chief Educational Officer
Villupuram District

5. The District Educational Officer
Tindivanam District

Versus

.. Appellants

K.R. Namasivayam

.. Respondent



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Writ Appeal filed under Clause 12 of the Letters Patent against the Order dated 23.11.2022 passed in Writ Petition No. 26681 of 2021 on the file of this Court.

For Appellants : Mr. Silambannan
Additional Advocate General
assisted by Mrs. Mythreye Chandra
Special Government Pleader

For Respondent : Mr. T. Karunakaran

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.MAHADEVAN, J**)

The appellants / Government have come forward with this intra-court appeal aggrieved by the order dated 23.11.2022 passed by the learned Judge, in W.P. No. 26681 of 2021.

2. The respondent herein preferred the aforesaid writ petition stating that he was appointed as Secondary Grade Teacher in the Government Higher Secondary School, Ayangarkulam, Kancheepuram District on 16.10.1973. During the course of his service, he completed B.A. Tamil Literature in the year 1978. On 16.11.1979, he was promoted to the post of Tamil Pandit. Thereafter, he passed M.A. Tamil Literature during the month of May 1981. For having acquired Master Degree in Tamil Literature, the respondent was given the first incentive (1st and 2nd increment) as per G.O. Ms. No.42 dated



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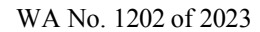
10.01.1969. Subsequently, the respondent passed B.Ed., Degree during December 1982 for which he was given the second incentive (3rd and 4th increment) as per G.O. Ms. No.42 dated 10.01.1969. It was further stated by the respondent that he has also completed M.Ed. Tamil Literature during May 1992 for which he has to be paid another incentive increment, but it was not paid. On 20.10.2003, the respondent was further promoted to the post of Headmaster of High School and he retired from service on 31.05.2004 as Headmaster of Government High School, Tindivanam, Villupuram District. After his retirement, by placing reliance on G.O. Ms. No.220 dated 27.10.2017, the respondent sought for third incentive (5th and 6th increment), but it was rejected by the fifth respondent/fifth appellant herein, by order dated 01.09.2021 by stating that a teacher is entitled for only two incentive increments in his service and not more than that. The further representation sent by the respondent was also rejected by the fourth respondent by order dated 29.10.2021, which was impugned in the writ petition bearing No. 26681 of 2021.

3. Before the writ court, the fifth respondent filed a detailed counter affidavit *inter alia* stating that for having acquired M.A. and B.Ed. degree qualifications, the respondent-writ petitioner was sanctioned one set of incentive increment each with effect from 27.05.1981 and 04.01.1982



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respectively as per the Government Orders in force. According to the fifth appellant, as per G.O. Ms. No.1023, Education, Science and Technology Department dated 09.12.1993, provisions were made for grant of third set of incentive increment provided a teacher has acquired M.Ed. degree qualification prior to the issuance of the said Government Order. Thus, the third incentive increment shall be awarded only to those who have obtained higher qualification prior to the issuance of the Government Order. Even as per the said Government Order, the maximum number of advance increments admissible to a teacher for obtaining higher qualification shall be four only i.e., two set of incentive increment. Further, in the said Government Order, it has been specifically stated that a B.T. Teacher who, after passing M.A. or M.Sc., and obtained two advance increments, shall be eligible for another two advance increments, if such higher qualification is obtained while working in the post of B.T. Assistant or Headmaster. Therefore, the maximum number of advance increments, which a teacher gets under the scheme of incentive increment, is four in his or her entire service. In the present case, even though the respondent acquired M.Ed. Tamil Literature qualification prior to G.O. Ms. No. 1024, Education, Science and Technology Department dated 09.12.1993, as he has already obtained two incentive increments, he is disentitled to get one more incentive increment. Therefore, the fifth appellant justified the order of refusal



to sanction the third set of incentive increment to the respondent and prayed for dismissal of the writ petition.

4. The learned Judge, on appreciation of the rival submissions, allowed the writ petition by order dated 23.11.2022. The relevant passage of the same reads as under:

"7. Admittedly, G.O. Ms. No. 37, Personnel and Administrative Reforms (FR~IV) Department dated 10.03.2020 does not refer to G.O. Ms. No. 220 dated 27.10.2017 relied upon by the petitioner for grant of third incentive increment. G.O. Ms. No. 37 dated 10.03.2020 refers to various Government Orders which are ten in number, but nowhere G.O. Ms. No. 220 dated 27.10.2017 which the petitioner relied upon is mentioned. Though the respondents may contend that G.O. Ms. No. 220 dated 27.10.2017 has been superseded by G.O. Ms. No. 37 dated 10.03.2020, this Court cannot accept the said contention in view of the fact that G.O. Ms. No. 37 dated 10.03.2020 has been issued by Personnel and Administrative Reforms (FR~IV) Department, whereas G.O. Ms. No. 220 dated 27.10.2017 has been issued by the School Education (S.E. 5(2)) Department and further, there is no reference to G.O. Ms. No. 220 dated 27.10.2017.

8. Though in G.O. Ms. No. 37 dated 10.03.2020, there is an observation that similar orders were issued by various other departments for sanctioning advance increments to certain category of staff of those departments for acquiring post graduate/Ph.D degrees in the respective subjects, admittedly, no similar order as that of G.O. Ms. No. 37 dated 10.03.2020, has been passed by School Education Department subsequent to the passing of the G.O. Ms. No. 220 dated 27.10.2017 by the School Education Department. Therefore, the said observation will not aid the respondents in denying the petitioner's claim for third incentive increment.

9. The Full Bench decision of this Court dated 29.04.2022 relied upon by the learned Additional Government Pleader will also not aid the case of the respondents in view of the fact that the Full Bench of this Court in the operative portion of its order has observed that under special circumstances, the Government Orders may have been passed enabling an employee to get more than two incentive increments. G.O. Ms. No. 220 dated 27.10.2017 relied upon by the petitioner is exclusively meant for Tamil Pandits and as per the said G.O., the third incentive increment is payable on completion of M. Ed degree on or before 09.12.1993 which has to be necessarily considered as a special circumstance.



10. Admittedly, the petitioner has also completed M. Ed degree before 09.12.1993. Being a special circumstance, that too, when G.O. Ms. No. 37 dated 10.03.2020 has not superseded G.O. Ms. No. 220 dated 27.10.2017, as seen from the G.O. Ms. No. 37 dated 10.03.2020, necessarily the third incentive increment sought for by the petitioner ought to have been granted by the fourth respondent. But the fourth respondent, though observed that the petitioner is entitled for third incentive increment, has erroneously rejected the same without assigning any reason.

11. For the foregoing reasons, this Court is of the considered view that the impugned order dated 29.10.2021 passed by the fourth respondent has to be quashed and the writ petition will have to be allowed.

12. Accordingly, the impugned order dated 29.10.2021 issued by the fourth respondent is hereby quashed and the fourth respondent is directed to pay the third incentive increment to the petitioner based on his M. Ed qualification obtained prior to 09.12.1993, within a period of eight weeks from the date of receipt of a copy of this Order.

13. With the aforesaid direction, this writ petition is allowed. No costs. "

5. Assailing the aforesaid order dated 23.11.2022 passed by the learned Judge, the present writ appeal is filed.

6. The learned Additional Advocate General appearing for the appellants submitted that the order passed by the learned Judge is contrary to G.O. (Ms) No.37, Personnel and Administrative Reforms Department dated 10.03.2020, wherein the Government has taken a policy decision to dispense with and/or cancel the scheme of sanction of advance increment for acquiring higher qualification in all departments with immediate effect. This order came to be passed superseding all other earlier Government Orders relating to sanction of advance incentive increment. However, the respondent sought for



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the third incentive increment, placed reliance on G.O. (Ms) No.220 dated 27.10.2017, which was issued specifically to implement the order passed by the Tamil Nadu Administrative Tribunal in O.A. No. 3193 of 1991 dated 04.02.1994 and it cannot be cited as a precedent by the respondent. It is further submitted by the learned Additional Advocate General that the learned Judge did not consider the fact that the respondent sought for third incentive increment for having passed M.Ed., Tamil Literature during the year 1992, in the year 2021. After a period of 15 years of his retirement, he submitted an application on 06.03.2021, which was rightly rejected by the fifth appellant on 01.09.2021. His further representation dated 16.09.2021 was also rejected on 29.10.2021. Therefore, the learned Additional Advocate General prayed for allowing this appeal by setting aside the order passed by the learned Judge.

7. Per contra, the learned counsel for the respondent-writ petitioner submitted that as per the G.O. Ms. No.220 dated 27.10.2017, the respondent-writ petitioner is entitled for third incentive increment. In fact, as per G.O. Ms. No. 220 dated 27.10.2017 Tamil Pandits, who have completed M. Ed degree on or before 09.12.1993 are entitled for third set of incentive increment. As the respondent has completed M.Ed. Tamil Literature during May 1992, the benefits of G.O. Ms. No.220 dated 27.10.2017 have to be extended to him.

Even though the respondent retired from service, he is eligible for third



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incentive increment as per the order passed by the Government and he should not be deprived of the same. The learned Judge, on appreciation of the above facts, has correctly allowed the writ petition filed by the respondent by the order impugned herein, which need not be interfered with by this court.

8. We have heard the learned Additional Advocate General appearing for the appellants and the learned counsel for the respondent and also perused the materials placed on record.

9. The issue involved in this writ appeal relates to sanction of third set of incentive increment to the respondent, for having acquired M.Ed. Tamil Literature during May 1992 when he was in employment. The learned Judge, by referring to G.O. Ms. No. 220 dated 27.10.2017 has allowed the writ petition filed by the respondent.

10. The main contention of the learned Additional Advocate General appearing for the appellants is that the above said G.O. Ms. No.220 dated 27.10.2017 was issued in order to comply with the directions issued by the Tamil Nadu Administrative Tribunal and hence, it cannot be extended to the respondent. It is further submitted that after 15 years from the date of his retirement on 31.05.2004, the respondent sought for grant of third set of



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incentive increment in his favour, which was not taken note of by the learned

Judge.

11. This court finds some force in the submissions so made on the side of the appellants. Admittedly, the appellants have sanctioned and paid two sets of incentive increment in favour of the respondent on 27.05.1981 and 04.01.1982 respectively. The dispute is with reference to the entitlement of third set of incentive increment by the respondent for having acquired M.Ed. Tamil Literature during May 1992. It is also not in dispute that the respondent retired from service as early as on 31.05.2004 and thereafter, referring to G.O. Ms. No.220 dated 27.10.2017, he submitted an application in the year 2021 to sanction third set of incentive increment. In other words, such application was made after 29 years of acquiring higher qualification and 15 years of his retirement.

12. The respondent placed heavy reliance on G.O. Ms. No. 220, School Education Department dated 27.10.2017, whereas the said G.O. came to be passed, in compliance with the order of the Tamil Nadu Administrative Tribunal dated 04.02.1994 in O.A. No. 3193 of 1991. No doubt, as per G.O. Ms. No. 220 dated 27.10.2017, third set of incentive increment was ordered to be paid to Tamil Pandits, who have acquired M.Ed. Degree prior to



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09.12.1993. In other words, if a secondary grade teacher got two incentive increments for acquiring higher qualification and thereafter promoted to the post of Tamil Pandit, he / she is eligible for 3rd incentive increment for acquiring M.Ed. qualification. In the present case, the respondent herein has acquired M.Ed., Tamil Literature during May 1992; after getting promotion as Tamil Pandit, he has acquired B.Ed., M.A. and M.Ed. qualifications and hence, he was granted two incentive increments and is not eligible for 3rd incentive increment for M.Ed degree.

13. It is pertinent to mention at this juncture that even before the respondent submitted his representation, the Government issued G.O. Ms. No.37 dated 10.03.2020, whereby a policy decision was taken to dispense with the payment of incentive increment. Therefore, placing reliance on the same, the fourth appellant has rightly passed the order of rejection dated 29.10.2021. Further, the Government issued G.O. (Ms) No.116, Personnel and Administrative Reforms (FR-IV) Department dated 15.10.2020 in which specific reference was made to various other Government orders passed in relation to incentive increment, including G.O. Ms. No.37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020; and it was stated in para No.4 (6) as follows:



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"6. Whether the other Government orders issued with respect to this subject in several departments and not mentioned in the Government order 1st read above are also cancelled/dispensed?

Yes. As per para 6 (i) of the Government Order 1st read above, all the Government Orders/Letters/Instructions issued related to this subject prior to 10.03.2020 by all the departments and not mentioned in the Government Order 1st read above are also stands cancelled/dispensed with effect from 10.03.2020."

Thus, it is evident that by G.O. Ms. No.116 dated 15.10.2020, a specific clarification has been issued with respect to enforceability or otherwise of G.O. Ms. No.37 dated 10.03.2020 as also various other government orders. It is further evident that the Government had reiterated the policy decision to dispense with the scheme of sanction of advance increment for acquiring higher education in all the departments and all the orders issued by all the departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled with immediate effect. Without considering the same, the learned Judge has allowed the writ petition filed by the respondent herein by the order impugned herein, which cannot be allowed to be sustained.

14. Admittedly, the respondent herein approached the authorities seeking third set of incentive increment for having acquired higher qualification during May 1992, in the year 2021. At the time of submission of the application, G.O. Ms. No.37 dated 10.03.2020 as well as G.O. Ms. No.116



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dated 15.10.2020 dispensing with the scheme of sanction of advance increment, have been in force. Therefore, the fourth appellant rightly rejected the said application of the respondent. It is needless to mention that if third set of incentive increment is directed to be paid to the respondent at this stage, it would result in enormous financial burden to the exchequer to calculate and pay such incentive increment to the respondent from May 1992, the date on which he acquired the higher qualification, till the date of disbursement, nearly for a period of 28 years. The appellants will also be burdened with the task of re-calculating and re-fixing his pay and pension prior and after his retirement. In any event, the claim made by the respondent is stale and therefore, the order of the learned Judge, is liable to be set aside.

15. In such view of the matter, the order of the learned Judge dated 23.11.2022 passed in Writ Petition No. 26681 of 2021 is set aside. Accordingly, the Writ Appeal is allowed. No costs.

[R.M.D., J] [M.S.Q., J]

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Index : Yes / no
Internet: Yes / no
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