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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.22412 of 2013, 14987 to 14992 of 2016
and 14976, 14977 and 33783 of 2017

and

M.P.No.2 of 2013

and

W.M.P.Nos.13082 to 13093, 34959 to 34963 and 35809 of 2016,
16217, 16218, 37429, 37430 of 2017 and 30017 of 2018

W.P.No.22412 of 2013:-

Tamil Nadu High-Higher Secondary School
Graduate Teacher's Association,
No.3A, Abdul Razack Street,
A2, Ivory Tower, Saidapet,
Chennai 600 015.
represented by its State President
P.Narayanasamy

... Petitioner

-Vs-

1. The State of Tamil Nadu,
represented by Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

... Respondents



Prayer in W.P.No.22412 of 2013:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the first respondent in Letter (Ms) No.129, School Education [Pa.Ka.5(2)] 2013-1 dated 17.07.2013 and quash the same.

In W.P.No.22412 of 2013

For Petitioner : Mr.S.Nedunchezhiyan
For Respondents : Mr.R.Ramanlal,
Additional Advocate General
Assisted by
Mr.Yogesh Kannadasan
Special Government Pleader

In W.P.Nos.14987 to 14992 of 2016 and 33783 of 2017

For Petitioners : Mr.S.Nedunchezhiyan
For Respondents : Mr.R.Ramanlal,
R1 to R3 Additional Advocate General
Assisted by
Mr.Yogesh Kannadasan
Special Government Pleader

In W.P.Nos.14976 and 14977 of 2017

For Petitioners : Mr.S.Nedunchezhiyan
For Respondents : Mr.R.Ramanlal,
R1 to R4 Additional Advocate General
Assisted by
Mr.Yogesh Kannadasan
Special Government Pleader



COMMON ORDER

WEB COPY The W.P.No.22412 of 2013 has been filed for the issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the first respondent in Letter (Ms) No.129, School Education [Pa.Ka.5(2)] 2013-1 dated 17.07.2013 and to quash the same.

2. The W.P.Nos.14987 to 14989, 14991, 14992 have been filed for the issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the fourth respondent in Na.Ka.No.38/2016 dated 30.03.2016 and to quash the same.

3. The W.P.No.14990 of 2016 has been filed for the issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the fourth respondent in Na.Ka.No.50/2016 dated 06.04.2016 and to quash the same.

4. The W.P.No.33783 of 2017 has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth Respondent in Na.Ka.No.18/2017 dated 18.02.2017 and to quash the same in so far as the petitioner is concerned and



consequently directing the respondents not to recover the incentive increment granted in favour of the Petitioner for M.Phil degree from the date of acquisition of the degree.

5. The W.P.Nos.14976 and 14977 of 2017 have been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fifth respondent in Na.Ka.F1/17-18 dated 02.05.2017 and to quash the same and consequently directing the respondents not to recover the incentive increment granted in favour of the petitioners for M.Phil degree from the date of acquisition of the degree.

6. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the material available on record.

W.P.No.22412 of 2013:-

7. The petitioner is an Association and the members of its Association are working as B.T Assistants (School Assistants). The post of B.T.Assistants i.e., School Assistants comes under the Tamil Nadu School Educational Subordinate Service i.e., High School service. This petition has been filed against the Letter of the Government dated 17.07.2013, in which, it is clarified by the Government that B.T Assistants are entitled for incentive increment for



second time for M.Ed or M.Phil or Ph.D as per G.O.(1D) No.18, School Education Department dated 18.01.2013, but the said incentive increment for the second time has to be sanctioned from the date of issuance of GO.(1D) No.18, School Education Department dated 18.01.2013 and by issuing the above letter, the Government directed that the second incentive increments for B.T.Assistant will be given only from the date of issuance of the above G.O and not from the date following the date of last examination of the degree. The petitioners were granted incentive increment for M.Phil for the second time from the day following the last date of the examination. Aggrieved by the letter dated 17.07.2013, the petitioner has filed the present writ petition.

8. In view of the Government Order in G.O.Ms.No.42 Education Department dated 10.01.1969, G.O.Ms.No.1024 School Education Department dated 09.12.1993 and G.O.(1D).No.18 School Education Department dated 18.01.2013, Secondary Grade Teacher or B.T. Assistant or Post Graduate Teacher would be entitled to get two incentive increments during the entire period of service as a teacher.

9. The petitioner herein seek for second incentive increment for possessing M.Phil degree. By virtue of G.O.(1D).No.18 School Education



Department dated 18.01.2013, the members of its Association would be entitled for award of second incentive for possessing M.Phil degree.

10. Learned counsel for the petitioners relies upon Fundamental Rule 26 Ruling 2 and submits that the members of its Association would be entitled for the incentive increment from the day following the last date of the examination of the degree, which they have passed. However, the impugned letter dated 17.07.2013 restricts award of incentive increment from the date of G.O.(1D).No.18 School Education Department dated 18.01.2013.

11. In the instant case, the members of the Association were awarded with a second incentive increment for having qualified in M.Phil Degree as per G.O.(1D).No.18 dated 18.01.2013. Through the impugned Government Letter dated 17.07.2013, the respondents have now ordered that the benefits under G.O.(1D).No.18 dated 18.01.2013 will only have a prospective effect and therefore, have sought for recovery of the second incentive increment already granted.

12. The learned counsel for the petitioner submitted that when the Government Order in G.O.(1D).No.18 provides for grant of second incentive



increment for possessing higher educational qualification, the same cannot be taken away by way of clarification through a letter.

13. I find some force in the submissions made by the learned counsel for the petitioner. F.R.26 Ruling 2 reads as follows:-

“(2) In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed”.

14. What has been ordered in G.O.(1D).No.18, cannot be given a go-by by way of clarification and the object of the Government Order, cannot be watered down through a letter. As a matter of fact, G.O.(1D).No.18 is in the mode of an amendment to an earlier G.O.Ms.No.1024 School Education Department dated 09.12.1993 wherein, the higher educational qualification of M.Phil and Ph.D were inserted along with M.Ed. Thus, the very reasoning given by the respondents in the impugned order that G.O.(1D).No.18 will have only a prospective effect, cannot be sustained, in view of the fact that this Government Order is only an expansion of the earlier existing G.O.Ms.No.1024 dated 09.12.1993. Even otherwise, as pointed out by the learned counsel for the petitioners, a Government Letter cannot overrule the Government Order. As



such, the impugned order itself cannot be sustained and the impugned proceedings issued by the first respondent in Letter (Ms) No.129, School Education [Pa.Ka.5(2)] 2013-1 dated 17.07.2013 is hereby quashed.

15. In view of the above, the W.P.No.22412 of 2013 stands allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

16. In view of the order passed in W.P.No.22412 of 2013, the impugned orders of the respondents in W.P.Nos.14987 to 14992 of 2016 and 14976, 14977 and 33783 of 2017 are also hereby quashed. W.P.Nos.14987 to 14992 of 2016 and 14976, 14977 and 33783 of 2017 are allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

27.07.2023

Internet : Yes
Index : Yes
Speaking order
Neutral Citation: Yes
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To

1. Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.



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G.K.ILANTHIRAIYAN, J.

mn

W.P.Nos.22412 of 2013, 14987 to 14992 of 2016
and 14976, 14977 and 33783 of 2017

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