



WEB COPY



WP.No.4569 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.4569 of 2020

and

WMP.No.5416 of 2020

A.Sivaprakasam

...

Petitioner

Vs.

1.The District Adi-Dravidar Welfare Officer,
Collectorate, Cuddalore,
Cuddalore District, Pin-607 001.

2.The Special Tahsildar (Adi Dravidar Welfare)
Virudhachalam,
Cuddalore District, Pin 606 001.

3.The Accountant General
(Accounts & Entitlements),
Tamil Nadu,
361, Anna Salai,
Teynampet, Chennai -600 018. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in No.P16/4/11625472/ADK/96 dated 17.05.2019 and the consequential order of the second respondent issued in Na.Ka.Aa/7/2019 dated 03.10.2019 and quash the said orders and direct the third respondent to re-fix the petitioner's retirement benefits by granting incentive



WP.No.4569 of 2020

increment for possession of B.Ed qualification from the date of his initial appointment, namely 29.11.1999 and consequently disburse the arrears of retirement benefits including refund of recovered DCRG amount of Rs.2,78,751/- with admissible interest for the said belated payment.

For Petitioner : Mr.P.Manojkumar

For Respondents : Mr.G.Nanmaran, Special Government Pleader

ORDER

The order of re-fixation of the pay of the writ petitioner as well as the recovery is under challenge in this writ petition.

2.The petitioner who was got a higher qualification has been appointed as Secondary Grade Teacher. The educational qualification for Secondary Grade Teacher is higher secondary or diploma along with B.Ed degree. The petitioner was appointed as a Secondary Grade Teacher by the 1st respondent on 21.10.1999 and thereafter, he jointed duty on 29.11.1999 after completing his training. On attaining the age of superannuation, he got retired on 31.03.2019 while he was serving as a Primary School Headmaster. Subsequently he was re-employed in the said post till 31.05.2019 through the first respondent's proceedings. When a pension proposal was forwarded by the 2nd respondent to the 3rd respondent, the



3rd respondent retuned the proposal by stating that the incentive increment granted to the petitioner for passing the higher qualification is not admissible. The 3rd respondent had also issued order to the 2nd respondent to recover a sum of Rs.6,73,764/- which have been paid towards the special increment.

3. Heard the submissions made by both side learned counsels and perused the materials available on record.

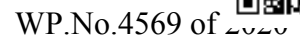
4. It is seen from the impugned order of the 3rd respondent that the petitioner was appointed as a Secondary Grade Teacher based on his higher qualification which he had on the date of his appointment itself. The said order of the 3rd respondent would mean that a person who possesses a higher qualification on the date of joining, is not entitled to get the special incentive but, if he chooses to acquire a higher qualification after he joined duty, he will be able to get the special increment.

5. The special increment is a kind of an incentive given to the government servants considering their efforts to improve their standards by acquiring additional qualification especially higher qualification. Such qualifications will



not make a difference whether it is acquired by the government servant at a time when he has joined or after he joined. In this regard it is relevant to cite the judgement of this Hon'ble Division Bench of this Court held in the case of ***R.Premakumari Vs. State of Tamil nadu*** reported in (2008) 5 MIJ 1349. A similar such case came for consideration before the Division Bench in the above case and in which it is held as under:

"9. That apart, if the relevant G.Os are examined carefully, it can be safely concluded that the G.Os in reality do not intend to lay down in the manner it has been now concluded by the learned single Judge. We have already extracted the relevant portions of the G.Os. The underlined portion of G.O.Ms.No.42 dated 10.1.1969 indicates that if a person possessing higher qualification enters into service, his initial pay may be fixed by giving advance increments. Similarly in the subsequent G.O.Ms.No.747, dated 18.8.1986, paragraph 2 makes it clear that "the P.G. teachers and Headmasters of Higher Secondary Schools who possess or acquire Post Graduate qualification in education i.e. M.Ed., Degree shall be granted two advance increments in the scales of pay admissible to them". It is nowhere contemplated in the G.Os., that the incentive increments would be given only to those who acquired subsequently the qualification, but it would be given to all those who either possess, which means the degree is obtained at the time of entering into service or acquire, which means the degree is obtained after entering into service. Even the subsequent G.Os or the clarifications, nowhere indicate that in order to be eligible for getting incentive increment, the person has to acquire such higher qualification only after entering into service and not otherwise. Therefore, we are unable to accept the conclusion of the learned single Judge that a person who enters into service after having acquired a higher qualification, is not entitled to get incentive



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8. In the above said judgement, it is further made clear that any excess payment made is also not liable to be recovered even it is presumed that the government servant is not entitled to receive those remunerations. Since the 3rd respondent has issued the recovery order to the petitioner who has already retired from service and it is contrary to the above judgment. Hence, I feel the impugned recovery order passed by the 3rd respondent is liable to be set-aside and the relief sought by the petitioner shall be granted.

5/7



WP.No.4569 of 2023

consequential order of the second respondent issued in Na.Ka.Aa/7/2019 dated 03.10.2019 are set aside. The third respondent is directed to re-fix the petitioner's retirement benefits by granting incentive increment for possession of B.Ed qualification from the date of his initial appointment, namely 29.11.1999 and consequently disburse the arrears of retirement benefits including refund of recovered Death Cum Retirement Gratuity amount of Rs.2,78,751/- with 6% interest per annum for the said belated payment, within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

31.10.2023

Index : Yes
Internet : Yes/No
jrs



WP.No.4569 of 2020

R.N.MANJULA, J.
jrs

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