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W.P.No.11503 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.11503 of 2021
and W.M.P.No.12244 & 12246 of 2021

M.Angelin

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Nilgris, Coonoor District.
- 4.The Block Educational Officer,
Coonoor Range-1,
The Nilgris,
Coonoor District - 643 101.
- 5.The Correspondent,
C.S.I. Primary School, Droog
Nonsuch Post,
Coonoor Range-1,
Coonoor - 643 102.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of



W.P.No.11503 of 2021

India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 3rd respondent District Elementary Educational Officer in Na.Ka.No.3090/Aa5/2020, dated 04.01.2021 and quash the same and further direct the respondents herein to sanction and award forthwith two incentive increments to the petitioner for possessing M.A. and B.Ed. Degrees.

For Petitioner : Mrs.Abisha Isaac

For Respondents 1 to 4 : Mr.K.Tamilvendan,
Government Advocate

ORDER

The petitioner has filed this writ petition seeking to call for the records relating to the impugned proceedings issued by the 3rd respondent District Elementary Educational Officer in Na.Ka.No.3090/Aa5/2020, dated 04.01.2021 and quash the same and further direct the respondents herein to sanction and award forthwith two incentive increments to the petitioner for possessing M.A. and B.Ed. Degrees.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher in the C.S.I Primary School, Droog, Nonsuch Post, Coonoor Range-I, Coonoor - 643 238, the fifth respondent



W.P.No.11503 of 2021

herein. The petitioner possessed a Diploma in Teacher Education (D.TED), B.A. (Tamil), M.A.(Tamil) and B.Ed degrees and was appointed as Secondary Grade Teacher with effect from 09.03.2012 in the fifth respondent school, which is a christian minority educational institution and his entire service is without any break or any blemish.

3. Learned counsel for the petitioner further submitted that in regard to the approval of the appointment of petitioner as a Secondary Grade Teacher, the petitioner filed a writ petition in W.P.No.12372 of 2014, before this Court and a Division Bench of this Court directed the respondent to approve the petitioner's appointment without insisting him to pass Teachers Eligibility Test (TET) by Judgment dated 24.08.2016. Accordingly, the petitioner's appointment was approved by the third respondent/District Elementary Education Officer vide proceedings Na.Ka.No.1119/A2/2014, dated 01.02.2018 with effect from the date of appointment.

4. Learned counsel for the petitioner contended that in order to encourage the teachers to acquire higher qualification, as the same would



benefits the students to have standard education with more knowledge and information, the Government evolved policy decision for grant of incentive increments to the teachers, who acquire higher qualifications over and above the qualification prescribed for appointment. The Government announced the payment of such increments to the teachers vide G.O.MS.No.42 (Education) dated 10.01.1969. As per the G.O., the teachers would be eligible for two advance increments for possessing or acquiring higher qualifications more than the required qualification. The Government also vide G.O.Ms.No.1023 (Education Science and Technology) Department dated 09.12.1993 ordered that a Secondary Grade Teacher is eligible for two advance increments for acquiring B.T/B.Ed qualifications.

5. Learned counsel for the petitioner further contended that the Government vide G.O.Ms.No.37, Personnel and Administrative reforms (FR-IV) Department dated 10.03.2020 cancelled/dispensed a policy decision for grant of incentive increments to the teachers who acquire higher qualifications in all departments with immediate effect. However, the Government ordered that the Government servants, who have acquired higher



W.P.No.11503 of 2021

qualifications prior to the issue of this order and not sanctioned with advance increments will be examined separately, as per the previous orders issued by the administrative department concerned.

6. Learned Counsel for the Petitioner further submitted that the Government vide G.O.Ms.No.116, Personnel and Administrative reforms (FR-IV) Department dated 15.10.2020 issued clarifications in relation to dispensation/cancellation of the scheme of sanction of advance increment in all the departments. The Government further clarified that the term incentive increment or advanced increment were used in different Government orders in respect of various departments indicates the same thing, that is incentive increment or advanced increment are same. The Government further ordered that in respect of Government servants, who have acquired higher qualifications prior to the issue of the G.O.Ms.No.37 and not sanctioned with advanced increments/not applied for sanction of advanced increments may be examined separately as per paragraph 6 (vi) of G.O.Ms.No.37 and appropriate orders to be issued on 31.03.2021.



W.P.No.11503 of 2021

WEB COPY

7. Learned Counsel for the petitioner would further submit that pursuant to G.O.Ms.No.116 dated 15.10.2020, the fifth respondent school submitted a proposal to fourth respondent/Block Educational Officer (BEO) to be submitted to the third respondent/District Elementary Educational Officer (DEEO), claiming increments to the petitioner for acquiring higher qualifications of M.A. and B.Ed degrees. The said proposal was returned by the third respondent/District Elementary Educational Officer (DEEO) vide proceedings in Na.Ka.No.3090/AA5/2020 dated 04.02.2021 to the fourth respondent/Block Development Officer (BEO) stating that though prior permission is not required for appointment, while permitting candidates to acquiring higher qualifications, the same should have been brought to the notice of the official respondents 3 and 4. The Counter signature of the fourth respondent in this regard is not enough. Since the permission of the official respondents was not obtained, ratification should be obtained from the Directorate of Elementary Education.

8. Learned counsel for the petitioner further contended that the above



proceedings of the third respondent/DEEO in Na.Ka.No.3090/AA5/2020 dated 04.02.2021 was circulated through the formal Whatsapp group of teachers managed by the fourth respondent/BEO and a copy of the same was not furnished to the petitioner. The fourth respondent/Block Educational Officer has not communicated in this regard either to the petitioner or to the fifth respondent school.

9. Learned counsel for the petitioner further submitted that the reason given by the third respondent/District Elementary Educational Officer to return the proposal submitted for incentive increments is highly arbitrary and illegal. There is no requirement under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules, 1974 to obtain permission or ratification for the purpose of permitting the teachers to pursue higher qualifications while in service. This Court settled the issue in relation to the same, holding that no such permission is contemplated under the said Act and Rules. It is pertinent to note that the Management of the School is the appointing authority and all issues in relation to the service of the staff are to be dealt with by the Management alone. Moreover, the fifth respondent



W.P.No.11503 of 2021

school is the minority institution. Hence, he prayed for allowing this writ petition.

10. Learned Government Advocate appearing for the respondents 1 to 4 filed a Counter Affidavit dated 05.08.2021 and submitted that the petitioner's appointment was approved by the third respondent vide order No.RC.No.1119/A2/2014 dated 01.02.2018 with retrospective effect from 09.03.2012 and the petitioner was paid with all monetary benefits from 09.03.2012. The Government have issued G.O.Ms.No.42, Education department dated 10.01.1969, introduced the scheme of awarding incentive increment for acquiring higher qualification to the teachers. The main objective of the scheme is to provide incentive for acquiring higher qualification and the same leads to the development of knowledge in the students and also to improve the academic skills of the students. But, acquiring higher qualification by the teachers should not affect the learning of the students and dislocation of work in schools. Henceforth, it was insisted that the teacher's before acquiring higher qualification should get prior permission from the Competent authority.



W.P.No.11503 of 2021

WEB COPY

11. Learned counsel appearing for the respondents 1 to 4 further submitted that in this case, the petitioner has not obtained prior permission from the competent authority, before acquiring higher qualification. The Correspondent of the school is the competent authority to accord permission to the teachers for having qualified with higher studies, subject to the condition that the same must be approved by the department. During the period 2014-16, the competent authority to grant permission for elementary aided school teachers is the concerned Assistant Elementary Educational Officer (AEEO). Now, the designation of AEEO has been changed as Block Educational Officer vide G.O.(MS).No.101 School Education (Budget-1) Department dated 18.05.2018. The petitioner's request to grant permission for acquiring higher qualification was accepted by the employer (i.e., the management), but no approval was obtained from the department.

12. Learned Government Advocate appearing for the respondents 1 to 4 would further submit that it is the duty of the petitioner and the fifth respondent to inform the competent authority before enrolling for higher



W.P.No.11503 of 2021

education. Though the petitioner's appointment was approved, the Government vide G.O.Ms.No.944/Education (D2) Department dated 29.07.1989 issued specific orders to the effect that the aided school employees should have to take permission of the Director of School Education, Chennai to join the correspondence course conducted by various universities to do part time course including Ph.D., conducted by various universities, subject to the condition that acquiring such qualification is useful to the students and without dislocation of work in schools and without any additional expenditure to the Government. In pursuance of the above said Government order, the Director of School Education in his proceedings L.Dis.No.101832/D3/99 dated 02.03.2000 has informed that the District Educational Officer can accord permission to the aided school employees, who wish to join correspondence course and for joining Ph.D., like courses, permission of the Director of School Education is necessary.

13. The learned Government Advocate appearing for the respondents 1 to 4 would submit that proceedings of the Director of School Education vide R.C.No.069381/K/C1/18, dated 21.10.2020, proposals were called for by the



W.P.No.11503 of 2021

Director of School Education, Chennai on behalf of the Government servants, who were not sanctioned with advance increment for having higher qualification. In the above mentioned proceedings, a detailed instruction has been given to check whether the individual has obtained prior permission of the department before pursuing higher studies.

14. Learned Government Advocate appearing for the respondents 1 to 4 further submitted that total expenditure of Coonoor Educational District itself costs up to Rs.18,22,690/- (Eighteen lakhs twenty two thousand six hundred and ninety only) for teachers, who did not obtain prior permission for acquiring higher qualification. If the petitioner is granted with incentive, even without obtaining proper prior permission, then the same will be a bad precedent in future for many claims, which will lead to huge monetary loss to the State Exchequer.

15. Heard the learned counsel on either side and perused the materials available on record.



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16. The petitioner while joining to the post of Secondary Grade Teacher has a Diploma in Teacher Education (D.T.Ed.) and subsequently possess higher qualification of B.A.(Tamil), M.A.(Tamil) and B.Ed. degrees and as per G.O.Ms.No.1023 (Education, Science and Technology Department) dated 09.12.1993, the Secondary Grade Teacher is eligible for two advance increments for acquiring B.Ed qualification and the Government has ordered that teacher would be again eligible for two advance increments for acquiring M.A., or M.Sc., or M.Ed., qualification. The issue regarding grant of increment/incentive to the person, who acquired higher qualification while working as Secondary Grade Teacher in the School has already been dealt with by this Court in many cases and this Court has held that they are entitled for incentive increments for acquiring higher qualification they possess. In a similar case, this Court in W.P(MD) NO.12472 of 2014 had already passed an order on 04.10.2019 and the relevant portion of the same is as follows:

“5. The learned Single Judge of this Court in the case of J.Tamilrajan Vs. The State of Tamil Nadu and others, by order dated 03.01.2019, has followed the unreported decision of this Court in a previous case, which is similar to the present case and held that the claims for incentive increment for acquiring



WEB COPY



W.P.No.11503 of 2021

higher qualification cannot be denied on the ground that undertaking higher education by the teacher was without prior permission.

6. The learned counsel for the respondents though relied upon the counter affidavit, reiterated the same contentions that was considered by the learned Single Judge of this Court in the similar case relied upon by the petitioner.

7. This Court has consistently held that the petitioner and other similarly placed persons are entitled to incentive increments, despite the fact that they had undergone higher studies without prior permission. As a result, this writ petition is allowed and the impugned order, dated 31.12.2012, passed by the second respondent is set aside. The respondents are directed to sanction incentive increments to the petitioner for M.A., and M.Ed within a period of eight weeks from the date of receipt of a copy of this order. No costs.”

17. In view of the above factual matrix of the case and the ratio laid down by this Court in W.P.(MD).No.12472 of 2014, this Court is of the considered view that the petitioner is eligible for two incentive increments for possessing M.A., and B.Ed., degrees and the impugned proceedings issued by the third respondent in Na.Ka.No.3090/Aa5/2020 dated 04.01.2021 is liable to be quashed and the same is hereby quashed.



W.P.No.11503 of 2021

WEB COPY

18. In the result, the Writ Petition is allowed and the respondents are directed to sanction and award forthwith two incentive increments to the petitioner for possessing M.A.(Tamil) and B.Ed degrees, within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

05.09.2023

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Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order



WEB COPY



W.P.No.11503 of 2021

SATHYA NARAYANA PRASAD, J.

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To:

- 1.The Principal Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Nilgris, Coonoor District.
- 4.The Block Educational Officer,
Coonoor Range-1,
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W.P.No.11503 of 2021



WEB COPY



W.P.No.11503 of 2021

05.09.2023