



W.P.No.16162 of 2022 and W.M.P.Nos. 15538, 15541, 15542, 24034 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
13.07.2023	19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.16162 of 2022 and
W.M.P.Nos. 15538, 15541, 15542, 24034 of 2022

S. Senthamarai, ... Petitioner

versus

1. The Director of Elementary Education
DPI Campus,
Chennai 600006

2. The District Educational Officer,
Tiruvannamalai

3. The Block Educational Officer-I
Thurinjapuram Block
Tiruvannamalai District. ...

Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the Third Respondent in Na.Ka.No.64/A1/2019 dated 19.04.2022 and the consequent proceedings in Na.Ka.No.64/A1/2019 dated 05.05.2022 and quash the same and accordingly direct the Respondents to continue the grant of incentive increments with effect from 29.12.2012 for having acquired the Higher Qualification.



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For Petitioner : Mrs. Dakshayani Reddy
Senior Counsel for
Mrs.Suneetha

For Respondents : Mr.M. Alagu Gowtham
Government Advocate

ORDER

This Writ Petition has been filed to quash the proceedings of the 3rd Respondent in Na.Ka.No.64/A1/2019 dated 19.04.2022 and 05.05.2022 and to direct the Respondents to continue the grant of incentive increments to the petitioner with effect from 29.12.2012.

2. It is the case of the Writ Petitioner that he has qualified 10 + 2 + B.Com acquired in the year 1987 and Diploma in Teacher Education in the year 1989 and appointed as Secondary Grade Teacher with effect from 10.10.1996. After appointment, the Petitioner did M.A.in History in May 2000 and acquired B.Ed., in December 2012. The Petitioner was also promoted to the post of Elementary School Headmaster with effect from 02.06.2009. As per the G.O.Ms.No.42 dated 19.01.1969 the Government evolved a policy to grant incentive increments to teachers for having



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acquired higher qualification. As per the above Government Order, a Secondary Grade Teacher is entitled for one incentive increment for B.Ed and one incentive increment for post graduate degree.

3. The Petitioner acquired B.Ed in the year 2012 accordingly she was granted two incentive increments for B.Ed and M.A. respectively. The Petitioner continued to receive the same for over a period of 10 years. The respondent issued proceedings dated 08.05.2019 holding that incentive increment was wrongly given to the Petitioner and she is not entitled for the same for having acquired B.Com and B.Ed. and directed the Petitioner to repay the excess amount received. The Petitioner gave a detailed reply to the Respondents stating that increment was issued correctly as she is entitled for increments for having acquired B.Ed. and M.A. Degrees. But the Respondents relied upon the proceedings of the 1st Respondent dated 24.08.2016 cancelled the incentive increments which had already been granted and received for over a period of 10 years. Hence the proceedings of the Respondent cancelling the incentive and recovery are challenged in this Writ Petition on the ground that the proceedings of the Director of



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Elementary Education dated 24.08.2016 mandates that incentive increment can only be granted for having acquired the higher education in Tamil, English, Mathematics and Social Science, the said proceedings can never be applied to the petitioner in as much as the Petitioner has been granted incentive increment in the year 2012 and the proceedings of the Directed dated 24.08.2016 can only be prospective and cannot be applied to the Petitioner. Hence the Writ Petition.

4. In the counter it is the stand of the Respondent is that the Petitioner was appointed as Secondary Grade Teacher on 10.10.1996 and promoted as Headmaster, Elementary School and is working under Department of Elementary Education. She acquired B.Com degree in the year 1987; Diploma in Teachers Training : 1989; M.A. History : May 2000 and B.Ed.: December 2012. As per G.O.Ms.No. 907, P & AR (FR II) Department dated 17.09.1986, it has been specifically stated that higher qualification should be with reference to the area of specialisation instead of any subject. In such cases, the incentive increment cannot be granted. B.Com., B.Ed. Degree obtained by the Petitioner would not serve any purpose to the



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children of the Middle School, where commerce subject is not at all taught.

Hence the Petitioner is not entitled to any incentive increment for B.Com, B.Ed.

5. The proceedings dated 24.08.2016 in Na.Ka.No.17731E1/2015 was issued after considering the G.O.Ms.No.42, Education, dated 10.01.1969, G.O.Ms.No.747, Finance (Pay Cell) Department, dated 18.08.1986, G.O.Ms.No.1032, Education, Science and Technology Department dated 09.01.1993 and G.O.Ms.No.134, School Education (G2) Department, dated 15.06.2007 was issued to ratify the irregular appointments otherwise the question of one time approval to the graduate teacher to the post of Middle School Headmasters if they had obtained degree in any U.G.course does not arise. The commerce or Economics etc., are not one of the subject taught, whereas Tamil, English, Mathematics. Physics, Chemistry, Botany, Zoology, History and Geography are the subjects taught at the elementary level (i.e., 1st Standard to 8th Standard). Therefore, incentive increment should be granted to the teachers who had studied and passed under graduate degree only in Tamil, English, Mathematics, Science and Social



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Science and along with B.Ed.,excluding that any teacher who had studied and passed in any under graduate decree with B.Ed. for whom the incentive increment should not be granted. Hence, in the Petitioner's case incentives have been granted wrongly, orders have been passed to cancel the incentive increment and also to recover the amount paid.

6. The learned Senior Counsel appearing for the Writ Petitioner mainly submitted that since the finance is one part of Social Studies the Petitioner is entitled for incentive increment for having acquired B.Com.,degree. Similarly she is also entitled for incentive increment for having acquired M.A. History. Hence, proceedings of the Respondents cannot be sustained in the eye of law. Further, her contention is that the Petitioner is received the benefits for more than 10 years. Even assuming that the incentives have been paid wrongly, the same cannot be recovered after 10 years.

7. Whereas the learned counsel for the Respondents submitted that the Petitioner is not acquired the relevant qualification as required by earlier G.O. Therefore, he is not entitled to any incentive increment. Since the



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incentives have been sanctioned wrongly, the impugned order has been passed.

8. I have perused the entire materials. It is not disputed that the Petitioner was appointed as Secondary Grade teacher in the year 1996. She has acquired B.Com., degree in the year 1987, Diploma in Teachers Training in the year 1989. After appointment she did M.A. History in May 2000 and acquired B.Ed., in December 2012. Though the G.O.Ms.No.42 Education, dated 10.01.1969 provided a policy to grant incentive increments to teachers for having acquired higher qualification, the fact remains that G.O.Ms.No.907, P&AR (FR II) Department dated 17.09.1986 has been specifically stated that higher qualification should be with reference to the the area of specialisation instead of any subject. It is also relevant to note that the Government have issued guidelines in G.O.Ms.No.624 Education (E2) Department dated 13.07.1992 with regard to sanction of incentive increment to teachers. Para 3(iii) of the above Government Order is extracted below:

“iii. In respect of teacher enrolling during



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1992-93 and after, sanction of increments shall be restricted to developing areas of study and subjects where teacher shortage has been identified. The Director of School Education will identify the subjects for purposes of incentive increment in which teachers will be encouraged to qualify in consultation with the Government in all future case. The intention is to encourage the teachers to get higher qualification in those specially selected subjects.”

Admittedly, the petitioner is presently working as Secondary Grade Teacher in Elementary School and the syllabus is only, Tamil, English, Maths, Science, Social Science. It is submitted that acquiring higher degree in Commerce subject will not serve any purpose. Hence, the Government order quoted by the petitioner is applicable to the teachers working in High Schools and Higher Secondary Schools. Hence this contention of the petitioner has no merit.”

9. Considering the above Government Order this Court in W.P.No.14446 of 2017 dated 07.11.2022 (Jothilingam vs. The Director of Elementary Education) has held as follows:



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“8. The very scheme of grant of incentive increment is a concession to the Teachers. The concession was granted only to encourage the Teachers to acquire higher educational qualifications for the purpose of imparting better education to the children studying in the School. Incentive increment is not a part of Service Conditions and it is a concession granted only in the event of acquiring higher educational qualifications relevant to the subject, in which, the Teacher is taking class in Schools. Thus, the qualification acquired by a Teacher must be relevant for the purpose of imparting education to the children in the School and irrelevant subjects cannot be considered as a criteria for the purpose of sanctioning incentive increment.”

10. Though the Order in W.P.No.3697 of 2018 dated 25.01.2022 [A.Anthonysamy vs. The District Elementary Educational Officer and another (High Court, Madras)] placed before this Court by the Writ Petitioner that this Court has distinguished the G.O. and directed the payment of increment. On perusal of the above, this Court is of the view that when the G.O.is specific and restricting the sanction of increments developing areas of study and subjects where teachers shortages were



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identified. As per the above G.O.the 1st Respondent has to identify the subject for the purpose of incentive increments. In such a view of the matter when the Secondary Grade Teacher acquired decree any specialised subject as a matter of right he/she cannot seek incentive increments. After all scheme of grant of incentive is a concession to the teachers and such concession granted only where the teachers obtained higher educational qualification related to the subject which taught in the school where the teacher is working.

11. In such a view of the matter order impugned cancelling the incentive increment is sustained. However, the recovery ordered stands quashed. Though the increment has sanctioned wrongly and the same has been paid continuously for more than 5 years to the Petitioner, recovery of incentive increment shall not permissible in view of the decision of the Supreme Court in **State Of Punjab & Ors vs Rafiq Masih (White Washer)** [(2015) 4 SCC 334] wherein it is held as follows:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the



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employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.



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12. Accordingly the Writ Petition is partly allowed. The impugned order cancelling incentive increment is sustained and the Recovery alone is set aside. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

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ggs

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N.SATHISH KUMAR, J.,

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Order in:

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