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W.P.No.18709 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **05.09.2023**

CORAM

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.18709 of 2020

L.Vijayakumar

... Petitioner

Vs.

1.The Director School Education,
DPI Campus,
College Road, Chennai - 600 006.

2.The Chief Educational Officer,
Ariyalur District.

3.The District Educational Officer,
Ariyalur District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the Respondents to grant incentive increment to the Petitioner as the second incentive increment for the M.Phil qualification with effect from 2016 by ratifying the admission into M.Phil Course.

For Petitioner : M/s.Suneetha

For Respondents : Mr.K.Tamilvendan,



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Government Advocate

ORDER

The petitioner has filed this writ petition seeking direction to the respondents to grant incentive increment to the Petitioner as the second incentive increment for the M.Phil qualification with effect from 2016 by ratifying the admission into M.Phil Course.

2. The petitioner was originally appointed as BT Assistant Mathematics with effect from 08.10.2007 and the petitioner probation was declared and the service was regularized. The petitioner is qualified with B.Sc., Maths, B.Ed., and M.Phil. As per the policy of the Government, a teacher is entitled for incentive increment for higher qualification. Accordingly, the petitioner was granted one incentive for B.Ed. along with M.A. and for having completed M.Phil, the petitioner is entitled for one more incentive increment.

2.2. Prior to the joining of M.Phil., course, the petitioner gave an application seeking prior permission to pursue M.Phil., vide application dated



16.10.2014, which was not considered and the petitioner joined and completed the course and the same was duly entered in his Service Register.

Hence, the petitioner is entitled for second incentive for having completed his M.Phil., degree, however, till date the petitioner's request for grant of the second incentive increment was not considered. Hence, the petitioner has come forward with the present Writ petition.

3. Learned Counsel for the petitioner submitted that the respondents ought to have considered the petitioner's application for prior permission regarding to the joining of M.Phil., course as early as 16.10.2014, but till date, despite several reminders from the headmaster, the application was not considered and hence the prior permission is deemed to be granted.

4. Learned counsel for the petitioner further submitted that the petitioner has attained the age of superannuation on 31.07.2019 and he is on extension of service. Hence, the petitioner is entitled for incentive increment for M.Phil. qualification, which he has completed in the year 2016. In order to substantiate his contention, learned counsel for the petitioner has relied on



the orders and judgment of this Court and the same is reads as follows:

1. W.P.(MD).No.10345 of 2021 dated 19.07.2021

2. W.P.(MD).No.14085 of 2015 dated 26.11.2020

3. W.A.(MD).No.1124 of 2023 dated 24.07.2023

5. The Government Advocate appearing for the respondents has filed a Counter Affidavit dated 28.09.2021. For better appreciation, the relevant paragraphs are extracted hereunder:

"The contention of the petitioner that he has joined and competed and the same was also duly entered in his service register is not correct and hence denied. It seems that he has completed his M.Phil degree through Part time course by attending the course on Saturdays and Sundays. The petitioner has neither submitted his M.Phil degree to the educational authorities till date nor requested for making entry in his Service Register regarding the acquisition of M.Phil degree. As per his statement, though he has completed the M.Phil degree in 2016, till his superannuation, he has not submitted his M.Phil degree and has not requested for sanction of incentive increment. The petitioner has attained superannuation on 31.07.2019 and he was on re-employment till the completion of academic year i.e., April 2020. The petitioner has approached this Hon'ble Court after superannuation and he is not legally entitled for the aid relief."

6. Heard the learned counsel on either side and perused the materials



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available on record.

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7. It is seen that as per the Government Order in G.O.Ms.No.42, Education Department, dated 10.01.1969, a teacher is entitled to get two incentive increments for acquiring higher qualification. Incentive increment is given to the teachers to encourage them to acquire higher qualification, for the benefit of the students. In the present case, for acquiring B.Ed., along with M.A., one incentive increment was given to the petitioner. The petitioner has acquired M.Phil., degree and the second incentive increment has to be given to the petitioner, however, the same was not given for the reason that the petitioner has not obtained prior permission, before joining the Course. The petitioner has given many representations as early as 16.10.2014, seeking prior permission for joining M.Phil., degree. Since the representation being made, the respondents has not granted the same. Subsequently, the Headmaster of the School vide proceedings dated 17.05.2018 and 22.03.2019, sent a reminder letter to the Chief Educational Officer, Ariyalur District to consider the application dated 16.10.2014 sent by the petitioner, seeking prior permission for joining the M.Phil., course,



which is still pending and no permission was granted till date.

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8. In a similar case, this court in **WP(MD).No.10345 of 2021** dated **19.07.2021** held that the incentive increment cannot be denied to the teachers for not obtaining prior permission from the authorities concerned. For better appreciation, the relevant paragraphs are extracted hereunder:

“5. The relevant portion of the order dated 22.04.2021 in WP(MD) No.8357 of 2021 [R.Precialla Valentina Vs. The Director of School Education], reads as follows:

4. Challenging the order of rejection, dated 11.01.2021, the present writ petition has been filed. The learned counsel for the petitioner submitted that the issue raised in the present writ petition has already been settled and this Court held that if at all the teacher acquired higher qualification for which the teacher is otherwise eligible to get the incentive increment the same cannot be denied on the sole ground that the teacher acquired higher education without prior permission and relied on the order of this Court, dated 04.10.2019 in W.P.(MD) No.12472/2014 (T.David Vs. The Director of School Education, Chennai and others) and submitted that reason for rejecting the proposal sent by the School, cannot be sustained.

7. The relevant portion of the order dated 04.10.2019, made in WP(MD).No.12472 of 2014 (T.David Vs. The Director of School Education, Chennai and others) reads as under:-



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“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 rpresent case and held that the claims for incentive increment for acquiring higher qualification cannot be denied on the ground that undertaking higher education by the teacher was without prior permission.”

7. In the order, dated 04.10.2019, made in W.P(MD)No.12472 of 2014, this Court has held that claims for incentive increment for acquiring higher qualification cannot be denied on the ground that pursuing higher education by the teacher was without prior permission. The said decision is squarely applicable to the facts of the present case.”

9. The learned counsel for the petitioner has also relied on another order of this Court in ***WP(MD).No.14085 of 2015, dated 26.11.2020*** in which this court has relied on the Judgment passed by the Division Bench of this Court, reported in ***(2015) 6 MLJ 315, Director of Elementary Education, Chennai Vs. G.Vijayalakshmi***, which reads as follows:

"35. Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto,



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applicable to both the teaching and non-teaching staff, in the schools, recognized and governed by the Tamil Nadu Recognized Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion of substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamilnadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School



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Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a 'No objection certificate' from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in sor far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of



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the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of reptition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973."

10. Learned counsel for the petitioner further relied on the judgment of the Division Bench of this Court in ***WA(MD).No.1124 of 2023, dated 24.07.2023***, wherein, it is held that in a similar case, the learned Single Judge of this Court has allowed the writ petition by following the view taken



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by another learned Judge of this Court in ***J.Tamilrajan Vs. Department of School Education and others passed in WP(MD).No.4019 of 2018*** and the same view of this Court was affirmed in ***W.A.(MD).No.813 of 2021*** in the case of ***The Director of School Education, DPI Campus, College Road, Chennai- 6 Vs.G.Anandhi, dated 16.04.2021.***

11. The above orders and judgment are squarely applicable to the present facts and circumstances of the case, merely because, the petitioner has not obtained prior permission from the Director of School Education for joining the M.Phil., course cannot deny the second incentive increment to the petitioner with effect from 2016.

12. In view of the above factual matrix of the case and the ratio laid down by the Madurai Bench of this Court, this Court is of the considered view that the petitioner is entitled for second incentive increment for obtaining M.Phil degree even without prior approval of the authorities concerned.

13. In the result, this writ petition stands allowed and the respondents



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are directed to grant incentive increment to the petitioner as the second incentive increment for the M.Phil., qualification with effect from 2016 by ratifying the admission into M.Phil., course. No costs.

05.09.2023

rjr/vm

Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order

J.SATHYA NARAYANA PRASAD,J.

rjr/vm

To:

- 1.The Director School Education,
DPI Campus,
College Road, Chennai - 600 006.
- 2.The Chief Educational Officer,
Ariyalur District.
- 3.The District Educational Officer,

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