



W.P.No.7524 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7524 of 2017

and

W.M.P.No.8210 of 2017

C.Jayanthi

... Petitioner

Vs.

1. The Director of Elementary Educational Officer,
College Road,
Chennai-6.
2. The District Elementary Educational Officer,
Thiruvarur.
3. The Assistant Elementary Educational Officer,
Mannarkudi,
Thiruvarur District.
4. The Headmaster,
P.U.Middle School,
54, Nemmeli,
Mannarkudi Union,
Thiruvarur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India



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praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 3rd respondent vide Na.Ka. No.1649/ 2017/A3/ dated 15.3.2017 confirming the order in Na.Ka. No.1649/ 2017/A3/ dated 18.1.2017 and quash the same and direct the 3rd respondents to refix/restore the Scale of Pay of the petitioner of Rs.18 950/-.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 3rd respondent dated 15.03.2017 confirming the order dated 18.01.2017 and direct the 3rd respondents to refix / restore the Scale of Pay of the petitioner of Rs.18,950/-.

2.It is the case of the petitioner that the petitioner passed Diploma in Teacher Education in 2004 and based on the employment seniority, she was appointed as Secondary Grade Teacher on 13.5.2005 at P.U. Middle School, South Nanalur, on consolidated wage of Rs.3,000/- per month. While in service with the permission of the department, she completed M.Com., in



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2010 and B.Ed., in 2013. The 3rd respondent by proceedings dated 25.07.2014, sanctioned two sets of incentive increment for higher qualification of M.Com. and B.Ed., with effect from 20.05.2013. Thereafter, the 3rd respondent by the impugned order dated 18.01.2017 cancelled the incentive increment and re-fixed/reduced the scale of pay from 18,950/- to 16,910/- and ordered recovery of amount of Rs.1,85,875/- on the ground that the teachers who acquired higher qualification other than Tamil, English, Maths, Science and Social science are not entitled incentive increment as per clarification letter of the 1st respondent dated 24.08.2015.

3. Aggrieved over the same, the petitioner filed W.P.No.3177 of 2017 before this Court and this Court by an order dated 09.02.2017 was pleased to defer the impugned proceedings for eight weeks and directed the petitioner to give her explanation, by treating the order impugned therein as Show Cause Notice. Pursuant to the orders of this Court, the 3rd respondent issued notice dated 06.03.2016 calling for explanation from the petitioner. The petitioner submitted her detailed explanation on 08.03.2017.



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Thereafter, the 3rd respondent in proceedings dated 15.03.2017 cancelled the incentive increment and affirmed the order of recovery and ordered re-fixation of the salary of the petitioner. Therefore, the act of the 3rd respondent is contravention to Rule 6(b) of Tamil Nadu Elementary Subordinate Service Rules. As per G.O.Ms.No.42, dated 10.1.1969, the teachers are entitled incentive increment on acquiring higher qualification. Subsequent to the said order, the Government issued various orders sanctioning incentive increment. As per G.O.No.324 dated 24.05.1995, the higher qualification prescribed for sanctioning of incentive increment reads thus:

(ii)For the sanction of incentive increments, the subjects in the Higher Secondary Syllabus shall be the relevant subjects
...

(v)The teachers who have acquired higher qualification in subjects other than higher Secondary Syllabus shall not be eligible for any incentive increment.

Accordingly, the 3rd respondent sanctioned two sets of incentive increment to the petitioner for acquiring higher



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qualification of M.Com., and B.Ed., by his proceedings dated 25.07.2014 with effect from 20.05.2013 and fixed the scale of pay in the pay band of Rs.16,350/-.

4.As per the abovesaid G.O., the teachers who have acquired higher qualifications in the subjects in the higher secondary syllabus are entitled incentive increment and that the petitioner was rightly granted incentive increment on the basis of the said Government Order. Therefore, the order of the 3rd respondent cancellation of granting incentives increment and ordering recovery and refixation of pay is contra to the said G.O. Further, that the audit objection was erroneously raised on the ground of Clarification Letter of the 1st respondent dated 24.08.2016 holding that the teachers who acquire higher qualification in subjects other than Tamil, English, Maths, Science and Social Science are not entitled to incentive increments. Therefore, the order of the 3rd respondent is unsustainable. Hence, this Writ Petition.



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5.The learned Government Advocate appearing for the respondents would submit that as per the proceedings dated 24.08.2016, the grant of incentive to the teachers for acquiring higher qualification in a particular subject should be on the conditions that the teacher should be required to teach the additional subjects based upon needs, in addition to his basic subjects. Further, the Director of School Education should judge the relevance of the subjects for allowing the grant of incentives to the past cases from 17.09.1986 to 1991-1992 and such grant will have only prospective effect. And the teachers who have acquired higher qualification in subjects other than higher secondary syllabus shall not be eligible for any incentive increments.

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

7.On a perusal of the documents, it is seen that the petitioner passed Diploma in Teacher Education in 2004 and based on the employment



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seniority, she was appointed as Secondary Grade Teacher on 13.5.2005 at P.U.Middle School on consolidated wage of Rs.3,000/- per month. while in service, with the permission of the department, the petitioner completed M.Com., in 2010 and B.Ed., in 2013. The 3rd respondent by proceedings dated 25.07.2014, sanctioned two sets of incentive increment for higher qualification with effect from 20.05.2013. Thereafter, the 3rd respondent by the impugned order dated 18.01.2017 cancelled the incentive increment and re-fixed/reduced the scale of pay from 18,950/- to 16,910/- and ordered recovery of amount of Rs.1,85,875/- on the ground that the teachers who acquired higher qualification other than Tamil, English, Maths, Science and Social science are not entitled incentive increment as per clarification letter of the 1st respondent dated 24.08.2016.

8.This Court in similar facts and circumstances has passed an order dated 13.03.2019 in W.P.No.20113 of 2018, etc., batch wherein this Court held as follows:

34.The Hon'ble Division Bench order cited by the learned counsel for the petitioner dated 15.07.2015 passed in



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Writ Appeal(MD).No.701 of 2015, the Court has taken note of the Government orders passed in G.O.Ms.No.1024, which categorically enumerates that the maximum number of advance increments, which a Teacher can get under the scheme is two incentive increments amounting to four increments. Thus, there is no question of grant of third incentive increment to a Teacher in the promotional cadre and the Teacher is certainly entitled to get two sets of incentive increments in his entire career.

35.Recently, the Hon'ble Division Bench considered the very same issue in respect of grant of incentive increment to the cadre of B.T.Assistant in Writ Appeal No.1664/2016 dated 29.06.2018. The Division Bench observed as follows:

“5. Mr.K.Karthikeyan, learned Government Advocate would contend that in view of G.O.Ms.No.1024 dated 09.12.1993, which restricts the maximum number of incentive increments to two and in view of the fact that the respondent had already been granted two incentive increments, which is equivalent to four advance increments, the respondent will not be entitled any further incentive increment during the period of his service. A copy of the said G.O. dated 09.12.1993 has been produced before us, the relevant portion of the G.O. reads as follows:

“The maximum number of advance increments which a Teacher can get under the Scheme of incentive increments under this Government Order shall be four in his entire service”.



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(one incentive increment is equivalent to two advance increments).

The said position was clarified by the Government in G.O.Ms.285, School Education Department dated 28.11.2007, which reads as follows:

“As per the policy decision of the Government, two incentives (four increments) only may be granted to the teachers for the entire period of their service and hence, accepting the above recommendation of the Director of School Education, for the Headmasters who got only one incentive for M.Ed. qualification during his service as Post Graduate Teachers and promoted to the Headmaster Post and after the promotion as Headmasters, on acquiring M.Phil/Ph.D/PGDTE qualification allowing a second incentive to such Headmasters from the date of the issue of this G.O. is ordered.”

6. Of course, the respondent in his affidavit filed in support of Writ Petition has referred to certain Government Orders as well as the Orders of this Court granting a third set of incentive increments to certain teachers. The said Government Orders have also been produced before us by the learned Government Advocate, those Government orders have



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been passed in particular cases, considering the peculiar circumstances of the case and the fact that the higher qualification in those cases are obtained, before 09.12.1993, i.e. the date on which the first G.O. i.e. G.O.Ms.No.1023 was passed restricting the number of incentive increments to a maximum of two, during the service of the teacher. Therefore, we do not think that those Government Orders which have been passed taking note of certain special circumstances could be taken as precedents to enable the respondent to claim an incentive increment, which he would not be entitled to otherwise.

7. The policy decision of the Government has been consistent to the effect that the teachers who acquire higher qualifications can be granted two incentive increments equivalent to four advance increments, during the entire tenure of their service. There is no dispute regarding the fact that the respondent has been awarded two incentive increments for acquiring B.Ed. and M.A. qualifications. Therefore, he cannot, as a matter of right, claim the third set of incentive increments for having obtained M.Phil qualification. We are therefore, unable to sustain the order of the learned Single Judge directing payment of third incentive increment to the respondent.



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8. *For the foregoing reasons, the Writ Appeal is allowed and the Writ Petition No.22860 of 2014 will stand dismissed. However in the circumstances without costs.*

Consequently, the connected miscellaneous petitions are closed.”

36.*The appeal filed by the Department has been allowed and the Hon'ble Division Bench directed that a Teacher is entitled for two incentive increments alone and the Government order also clarifies the same. Thus, the third incentive increment is impermissible as per the terms and conditions of the scheme itself.*

37.*Under these circumstances, a promotion granted to a Teacher will not confer any further legal right to claim third incentive increment on acquisition of higher educational qualification. Every Teacher in his entire service is entitled to get two incentive increments for acquiring higher qualification in their service and the Degrees, which all are eligible and other criterias as fixed in the Government orders and the Government has to follow scrupulously in respect of grant of incentive increment for all the Teachers without any discrimination.*



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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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