



W.A.(MD)No.1171 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1171 of 2013
and M.P.(MD)No.1 of 2013

- 1.The Commissioner,
Corporation Madurai,
Madurai – 2.
- 2.The Education Officer,
Corporation of Madurai,
Madurai – 2.
- 3.The Headmistress,
Avvai Corporation Girls Higher Secondary School,
East Avani Moola Street,
Madurai – 1.

... Appellants

Vs.

- 1.B.Balumani
- 2.The Secretary,
Department of School Education,
Secretariat, Chennai.
- 3.The Director of School Education,
College Road,
Chennai – 600 006.

...Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 12.07.2013 made in W.P.(MD)No.15829 of 2012 on the file of this Court.



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For Appellants : Mr.R.Murali
Standing Counsel
For 1st Respondent : Mr.C.Vellaisamy
For Respondents 2 & 3 : Mr.A.Kannan
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal has been directed against the order passed by the learned Judge in W.P.(MD)No.15829 of 2012 dated 12.07.2013.

2. The first respondent is the writ petitioner, who was a teacher working in the school run by the appellant Corporation. She was appointed as a Secondary Grade Teacher on 02.08.1995 in the Government High School, Varasandu, Theni District, thereafter, he was promoted as BT Assistant on 29.12.2004 and Post Graduate Assistant on 19.06.2006. When he was working as Secondary Grade Teacher, he acquired B.Sc., and M.Sc., degrees and B.Ed., degree also, for which, two sets of increments have been granted. When he was working as P.G. Assistant, he acquired M.Phil., decree in the year 2010. After doing so, he made a representation to the third appellant herein seeking incentive increment for possessing M.Phil.



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Degree for the P.G. Assistants, based on the Government Order issued in G.O.Ms.No.1023, School Education Department, dated 09.12.1993. The third appellant herein by order dated 16.12.2011, rejected the claim of the writ petitioner. Therefore, challenging the same the Writ Petition was filed.

3. Considering the said plea made by the writ petitioner the learned Judge following the decision of the Division Bench made in this regard earlier in *W.A. Nos.2604 to 2606 of 1999 dated 20.06.2006*, allowed the said writ petition and set aside the order impugned therein, thereby, made the petitioner to get the third set of incentive increment for having secured M.Phil. Degree.

4. As against which, though this writ appeal was filed in the year 2013, during the pendency of the Writ Appeal since contempt petition was filed for non-compliance of the orders passed by the Writ Court, in order to overcome the same, it seems the appellant Corporation had complied with the said order on 01.03.2021, implementing the order of granting the third set of increment with effect from the date on which the writ petitioner acquired M.Phil. qualification.



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5. When that being so, during the pendency of the Writ Appeal, subsequently, the issue as to whether the teachers who acquired higher qualification, who were already getting two sets of incentive increments would be entitled to get a third set of incentive increment was referred, as there has been conflicting judgments by various Division Benches on the issue, before the Hon'ble Full Bench of this Court.

6. A Hon'ble Full Bench of this Court by order ***dated 29.04.2022*** in ***W.A. Nos.3674 of 2019*** etc., batch has held as follows:-

“ 13. In the light of the above, we are of the considered opinion that the view taken by the Division Bench in W.A.No.1664 of 2016 dated 29.06.2018 (The Director of School Education and others v. V.Dhanapal) that a teacher shall be granted only with two incentive increments, equivalent to four advance increments, for the entire period of his/her service, holds good and the view taken by the Division Bench in W.A. (MD) Nos.701 and 769 of 2015 etc., dated 15.07.2015 (The Director of School Education and others v. S.Amalraj) and the view taken by another Division Bench in W.A. (MD) No.867 of 2014 dated 18.09.2014 (The Director of School Education and another v. N.Balasoundari and another) that a teacher is entitled to the third set of incentive increment,



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cannot be said to be a good law. We answer the reference accordingly.”

7. Therefore, the law already been declared by the Division Bench that, the teachers are entitled to get third set of increment was declared not a good law and the contrary view taken by the other Division Bench was declared to be the good law and therefore, the decision of the Hon'ble Full Bench was that the teachers are not entitled to get the third set of advance incentive increment. When that being the law, having been declared by the Hon'ble Full Bench of this Court by order dated 29.04.2022, the writ petitioner who is the first respondent in this Writ Appeal is not entitled to get such a third set of incentive increment. Hence, the order impugned passed by the Writ Court is liable to be set aside.

8. However, during the pendency of the Writ Appeal, admittedly, the orders passed by the learned Judge has been complied with, of course, subject to the outcome of the Writ Appeal, as at that time itself the Writ Appeal was already filed and pending before this Court and the law also has not been declared by the Hon'ble Full Bench by judgment dated 29.04.2022,



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whatever the payments made by implementing the order extending benefit of third set of incentive increment need not be recovered from the first respondent teacher. However, hereafter, since the writ petitioner is not entitled to get any such third set of incentive increment, corresponding increased pay by way of increased increment already been complied with pursuant to the Writ Petition order can be rectified and the same can be reduced.

9. In the result, this Writ Appeal is accordingly disposed with aforesaid directions and observations. However, there shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

15.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

SJ
To

1.The Secretary,
Department of School Education,
Secretariat, Chennai.

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2.The Director of School Education,
College Road,
Chennai – 600 006.

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K.K.RAMAKRISHNAN, J.

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