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W.A.(MD) No.23 of 2022 & W.A.(MD) No.838 of
2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.(MD) No.23 of 2022
and
C.M.P.(MD) No.542 of 2022
and
W.A.(MD) No.838 of 2023

W.A.(MD) No.23 of 2022:

- 1.The Joint Director of School Education
D.P.I.Complex, College Road
Nungambakkam, Chennai
- 2.The Chief Educational Officer
Office of the Chief Educational Officer
Dindigul District
- 3.The District Educational Officer
Office of the District Educational Officer
Batlagundu, Dindigul District

... Appellants

-VS-

- 1.K.Balavadivel



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W.A.(MD) No.23 of 2022 & W.A.(MD) No.838 of 2023

2.The Secretary
N.S.V.V.Boys Higher
Secondary School
Pattiveeranpatti
Dindigul District

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 29.03.2021, passed in W.P.(MD) No.7014 of 2021, on the file of this Court.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondents : Mr.J.Lawrance for R1
No appearance for R2

W.A.(MD) No.838 of 2023:

R.Balavadivel

... Appellant

-vs-

1.The Joint Director of School Education
D.P.I.Complex, College Road
Nungambakkam, Chennai

2.The Chief Educational Officer
Office of the Chief Educational Officer
Dindigul District

3.The District Educational Officer
Office of the District Educational Officer
Batlagundu, Dindigul District



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4.The Secretary
N.S.V.V.Boys Higher
Secondary School
Pattiveeranpatti
Dindigul District

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 24.02.2023, passed in W.P.(MD) No.1059 of 2022, on the file of this Court.

For Appellant : Mr.J.Lawrance

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader for R1 to R3
No appearance for R4

J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

W.A.(MD) No.23 of 2022 is directed against the order of the learned Single Judge, dated 29.03.2021, passed in W.P.(MD) No.7014 of 2021. Whereas, W.A.(MD) No.838 of 2023 is directed against the order of the learned Single Judge, dated 24.02.2023, passed in W.P.(MD) No.1059 of 2022.



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2. For the sake of convenience, the parties are referred to as per the ranking in the writ petitions.

3. The writ petitioner is working as B.T.Assistant in the respondent – School and he acquired M.Phil., Degree during his service in April, 2014. He wanted to avail incentive increment for having higher educational qualification of M.Phil. Degree from the date of his eligibility i.e. from April, 2014. His request was rejected by the respondent - Department, mainly on the ground that the writ petitioner had not obtained prior permission from the respondent - Department to undergo the said course.

4. Challenging the same, the writ petitioner filed W.P.(MD) No. 7014 of 2021 for issuance of a writ of mandamus directing the District Educational Officer to sanction incentive increment to him for possessing higher educational qualification of M.Phil., Degree with effect from April, 2014, by considering the proposal, dated 28.08.2017, sent by the respondent – School.



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5. The learned Single Judge, by order dated 29.03.2021, allowed the said writ petition relying upon the Judgments of this Court for the proposition that the claim of the teachers for incentive increment cannot be turned down merely on the ground that such higher educational qualification was acquired without obtaining prior permission from the Department and directed the District Educational Officer to positively consider the proposal sent by the respondent – School recommending the candidature of the writ petitioner for grant of incentive increment for possessing higher educational qualification of M.Phil. Degree.

6. Challenging the same, the respondent – Department has filed W.A.(MD) No.23 of 2022.

7. Despite the above order of this Court, again, the District Educational Officer, by order dated 22.07.2021, rejected the claim of the petitioner for incentive increment for the very same reason that the writ petitioner had not obtained prior permission to undergo the course.



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8. Challenging the same, the writ petitioner filed W.P.(MD) No. 1059 of 2022. The learned Single Judge, by order 24.02.2023, after referring to the Rules, came to the conclusion that the Government Servants have to obtain prior permission from the Head of the Department concerned before undergoing higher studies and since the writ petitioner had not obtained prior permission, dismissed the writ petition filed by him along with the other writ petitions filed by the other Teachers for the same relief.

9. Stating that the Judgment of this Court in similar cases have not been considered by the learned Single Judge while dismissing the writ petition, the writ petitioner filed W.A.(MD) No.838 of 2023.

10. Learned Additional Government Pleader appearing for the respondent – Department submits that the writ petitioner has not obtained M.Phil. Degree in regular course and therefore, his claim for incentive increment cannot be considered. To that effect, learned Additional Government Pleader produced before this Court a copy of G.O.(Ms) No.91, Higher Education (K2) Department, dated 03.04.2009, wherein the



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Government has declared that M.Phil. and Ph.D. Degrees obtained through Correspondence / Distance Education / Open University System are ineligible for Government appointments and appointment as Lecturers in Colleges / Universities including self-financing colleges. However, on verification, it is now confirmed that the writ petitioner obtained higher qualification in the regular stream.

11. This Court is of the view that the issue on hand is no more *res integra*, as this Court, by Judgment dated 24.07.2023 in W.A.(MD) No.1124 of 2023 (***The Joint Director of School Education and others vs. S.Vasugi and another***), by following the earlier decision of this Court in the case of ***the Director of School Education, D.P.I. Campus, College Road, Chennai-6 vs. G.Anandhi***, in W.A.(MD) No.813 of 2021, dated 16.04.2021, has held that even though permission is required for undergoing higher studies, absence of getting prior permission will not disentitle the teachers to claim incentive increment for possessing such higher educational qualifications. In the said Judgment, this Court has also observed that payment of incentive increment for acquiring higher educational qualifications is to encourage the teachers to acquire higher educational qualification, so that the quality of education will



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be improved more. In the said circumstances, this Court finds that the writ petitioner is entitled to succeed.

12. Accordingly, W.A.(MD) No.23 of 2022 filed by the respondent – Department is dismissed. W.A.(MD) No.838 of 2023 filed by the writ petitioner is allowed and the order dated 24.02.2023, passed by the learned Single Judge in W.P.(MD) No.1059 of 2022 is set aside insofar as it relates to the writ petitioner alone. The respondent – Department is directed to comply with the directions of the learned Single Judge in the order dated 29.03.2021 in W.P. (MD) No.7014 of 2021, within a period of twelve weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

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

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2023

To:

- 1.The Joint Director of School Education,
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Nungambakkam, Chennai.
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S.S.SUNDAR, J.
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