



W.A.(MD)No.119 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A.(MD)No.119 of 2023

and

C.M.P.(MD)No.1536 of 2023

R.Rajmohan

... Appellant / Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Secretariat, Fort St.George, Chennai-600009.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai-600006.

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3.The Regional Accounts Officer (Audit),

School Education Department,

Madurai Region, Madurai.

4.The Chief Educational Officer,

Dindigul District, Dindigul.

5.The Headmaster,

Government Higher Secondary School,

Nilakottai-624208, Dindigul District.

... Respondents / Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.11.2022 made in W.P.(MD)No.4973 of 2019 on the file of this Court.

For Appellant : Mr.J.Lawrance

For R1, R2, R4 : Mr.D.Sadiq Raja,

& R5 Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by D.KRISHNAKUMAR, J.]

This Writ Appeal is directed against the order dated 16.11.2022 made in W.P.(MD)No.4973 of 2019 on the file of this Court.

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2.The case of the appellant / writ petitioner is that he was originally appointed as Physical Education Teacher in the year 1998. The qualification prescribed for the said post was possession of Bachelor of Physical Education Degree (BPES). However, the petitioner was possessing higher degrees of Master of Physical Education Degree (MPES) and M.Phil in Physical Education. Initially, he was awarded one incentive increment for MPES in the year 1998 itself. Subsequently, in the year 2012, he was awarded an additional incentive increment for possessing M.Phil in Physical Education. The said incentive increment was given with effect from the date of the writ petitioner's appointment ie., 17.03.1998. Thereafter, the 3rd respondent has passed an order dated 27.03.2018, stating that the writ petitioner was not entitled for the benefit of incentive increment with effect from 17.03.1998, however, he was only entitled for the benefit with effect from the date of issuance of G.O.(Ms)No.177, School Education Department, dated 13.10.2016. Consequently, the 5th respondent has also passed an order dated 02.11.2018 for recovery of the amount paid to the appellant / writ petitioner. The said orders were under challenge in the Writ Petition.

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3.The Writ Court, after perusing the entire materials available on record, dismissed the Writ Petition. Assailing the said order, the present Writ Appeal is filed on the ground that in the light of G.O.(Ms).No.177, School Education Department, dated 13.10.2016, the writ petitioner is entitled for the benefit of incentive increment with effect from 17.03.1998 for acquiring higher qualification of M.Phil. However, the Writ Court has not considered the case of the writ petitioner in proper perspective. Therefore, the order of the Writ Court is liable to be set aside.

4.Per contra, the learned Additional Government Pleader appearing for the respondents 1, 2, 4 and 5 submitted that till G.O.(Ms).No.177 was issued, M.Phil degree has not been recognized as higher qualification. However, the authority concerned wrongly calculated and sanctioned the incentive increment to the writ petitioner with effect from 17.03.1998. Therefore, recovery has been ordered by the 5th respondent.

5.Heard the learned counsel on either side and perused the materials available on record carefully.

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6. In the light of the aforesaid submissions made on either side, we are of the view that the Government issued G.O.(Ms)No.42, Education Department, dated 10.01.1969 for granting incentive increments to those who are possessing or acquiring higher qualification specified in the annexure. G.O.Ms.No.95, Education Department, dated 21.01.1980 was issued for Physical Directors / Physical Education Teachers Grade I & II. The higher qualification mentioned in the aforesaid Government Order are M.P.Ed/B.T or B.Ed or B.P.Ed or Diploma in Physical Education, wherein the qualification of M.Phil has not been prescribed for eligible for payment of the additional increment. Therefore, the Writ Court has rightly rejected the claim of the writ petitioner and there is no illegality or irregularity in the order passed by the Writ Court. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [L.V.G., J.]
14.02.2023

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

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D.KRISHNAKUMAR, J.

AND

L.VICTORIA GOWRI, J.

MYR

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Secretariat, Fort St.George, Chennai-600009.
- 2.The Director of School Education,
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