



W.P.(MD).No.2137 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 13.07.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.2137 of 2021**

M.Gandhimathi

... Petitioner

Vs.

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

2.The Chief Educational Officer,  
O/o.The Chief Educational Officer,  
Virudhunagar District,  
Virudhunagar.

3.The District Educational Officer,  
Virudhunagar Educational District,  
Virudhunagar,  
Virudhunagar District.

4.The Secretary,  
SHN Ethel Harvey Girls Higher Secondary School,  
Railway Feeder Road,  
Sattur,  
Virudhunagar District.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent



**W.P.(MD).No.2137 of 2021**

vide O.Mu.No.5355/A5/2019 dated 10.08.2020 and quash the same and consequently direct the fourth respondent to forward the proposal in respect of the petitioner's incentive increment for having acquired M.Phil., Degree to the second and third respondents and direct the second and third respondents to approve the same within the time frame fixed by this Court.

For Petitioner : Mr.R.Krishnan

For RR 1 to 3 : Mr.N.Ramesh Arumugam  
Government Advocate

**ORDER**

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent, dated 10.08.2020 and consequently to direct the fourth respondent to forward the proposal in respect of the petitioner's incentive increment for having acquired M.Phil Degree to the second and third respondents and direct the second and third respondents to approve the same within the time frame fixed by this Court.



**W.P.(MD).No.2137 of 2021**

2.The petitioner was appointed as B.T Assistant (Graduate Assistant) Teacher in Mathematics on 26.02.2003 with basic qualification for B.T Assistant in Bachelor Degree with B.Ed. Before joining the fourth respondent School, the petitioner had completed M.Sc. She was given an incentive increment for having acquired M.Sc Degree at the first instance. While she was working as B.T Assistant, she sought permission from the fourth respondent to study M.Phil on 21.08.2006. Thereafter, she completed her M.Phil Degree in the month of April, 2014. Hence, the petitioner is entitled to get an incentive increment for having acquired M.Phil with effect from the date of completion of the M.Phil Degree. It is pertinent to mention here that it is only with the permission of the fourth respondent School, the petitioner underwent the said course and the permission granted by the fourth respondent was also entered in the service register. Thereafter, the fourth respondent sent a proposal to the third respondent seeking ratification for permission for studying M.Phil and getting an incentive increment for the said M.Phil Degree on 28.10.2014. However, the said proposal was rejected on 06.12.2014 by the third respondent on the ground that the petitioner did not get prior permission for studying a higher course. Though the petitioner had sought the permission of the fourth respondent School, since the



**W.P.(MD).No.2137 of 2021**

permission of the third respondent was not sought for through the fourth respondent before completing the said course, the said proposal came to be rejected. Thereafter, on 14.06.2016, the proposal was again sent to the third respondent. The said proposal was forwarded through the third respondent to the Joint Director of School Education, dated 14.11.2017. However, the same came to be rejected by the impugned order passed by the third respondent on 10.08.2020, wherein it has been stated that since the said qualification has been availed by the petitioner without getting prior permission from the Department concerned, the petitioner is not entitled to get incentive increment for the qualification of M.Phil Degree. Challenging the same, the present Writ Petition came to be filed.

3. Heard Mr.R.Krishnan, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 3.

4. The learned counsel appearing for the petitioner relied on the order passed by this Court in ***W.P(MD)No.17732 of 2020, dated 09.12.2020 (L.Valli Vs. The Director of School Education and others)***, in a similar case pertaining to the same fourth



**W.P.(MD).No.2137 of 2021**

respondent School, wherein it has been categorically held that it is not necessary for any Teacher to get prior permission for studying any Degree and not availing prior permission will not be a bar for granting incentive increment and the relevant portion of which is extracted as follows:-

*5. On perusal of the said judgment, it appears that there is no need to get any prior permission for undergoing higher studies. Paragraph Nos.12 and 13 of the said judgment is as follows:*

*"12. In the judgment reported in (2015) 6 MLJ 315, Director of Elementary Education, Chennai, vs. G.Vijayalakshmi and another, relied on by the petitioner, the Division Bench of this Court held as follows:-*

*"35. Tamil Nadu Recognised 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, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil*



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**W.P.(MD).No.2137 of 2021**

*Nadu Recognised 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 nonteaching 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 AnnexureII. 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*



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**W.P.(MD).No.2137 of 2021**

*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 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.*



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**W.P.(MD).No.2137 of 2021**

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 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.



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W.P.(MD).No.2137 of 2021

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."

13.The above judgment is 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 correspondence course, it cannot be said that there is a violation of the provisions of the Tamil



**W.P.(MD).No.2137 of 2021**

*Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner is entitled to incentive increment."*

5.Considering the fact that the present issue is squarely covered by the said Judgment and that the issue is no more integra and also recording the fact that a Writ Appeal has been preferred as against the Writ Petition in W.P(MD)No.17732 of 2020 before the Division Bench of this Court in W.A(MD)No.825 of 2021 by the Director of School Education was also came to be dismissed on 17.04.2021, this Writ Petition has to be allowed.

6.Per contra, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 to 3 would submit that in the light of G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989, the aided school employees should get the



**W.P.(MD).No.2137 of 2021**

permission of the Director of School Education to join the correspondence course conducted by various Universities and any course which has been done without permission of the Director of School Education would not attract payment of incentive increment for acquiring the additional qualification, if any.

7.In the light of the orders passed by this Court in W.P(MD)No.17732 of 2010 and W.A(MD)No.825 of 2021, the matter is well settled and the argument of the learned Government Advocate would not hold good.

8.In view of the above, the impugned order passed by the third respondent, dated 10.08.2020, is quashed and consequently, the fourth respondent is directed to forward the proposal in respect of the petitioner's incentive increment to the third respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the third respondent is directed to approve the same, in accordance with law, within a period of twelve weeks thereafter.



**W.P.(MD).No.2137 of 2021**

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9. With the abovesaid observation, this Writ Petition is allowed. There shall be no order as to costs.

**13.07.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
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**W.P.(MD).No.2137 of 2021**

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W.P.(MD).No.2137 of 2021

**L.VICTORIA GOWRI, J.**

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**W.P.(MD)No.2137 of 2021**

**13.07.2023**