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W.A.(MD) No.1243 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.1243 of 2023
and
C.M.P.(MD) No.9309 of 2023**

1.The District Elementary Educational Officer
Ramanathapuram

2.The Additional Assistant
Elementary Educational Officer
Muthukulathur
Ramanathapuram District

... Appellants

-vs-

M.Shanmuga Sundaram

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.08.2021, passed in W.P.(MD) No.1699 of 2016, on the file of this Court.

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

For Respondent : Mr.T.Indrachithu



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J U D G M E N T

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

This writ appeal is directed against the order of the learned Single Judge, dated 18.08.2021, passed in W.P.(MD) No.1699 of 2016.

2. The scheme of incentive increment was introduced by the Government of Tamil Nadu with a noble object of encouraging the teaching staff to acquire additional / higher educational qualifications, which would be of greater assistance in imparting better education to the children studying in Schools across the State of Tamil Nadu. The said scheme was introduced by way of concession and it cannot be construed as a condition of service.

3. Concession is a privilege. Condition of service is a right. The right and the concession are distinguishable. The right provides entitlement. The concession gives privilege. While right can be demanded, privilege is to be claimed with reference to the scheme in force. Thus, concession extended under the scheme of incentive increment cannot be construed as an absolute right of teaching staff and such schemes are to be implemented scrupulously by following the terms and conditions stipulated under the scheme.



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4. The scheme of incentive increment has been formulated so as to encourage the teaching staff to acquire educational qualifications, which are all relevant to the post in which they are working and to impart better education to the children. Therefore, it is not as if every educational qualifications are made eligible to claim incentive increment under the scheme.

5. With the above background, the issue to be decided in this writ appeal is, whether a Secondary Grade Teacher on acquiring the educational qualification of M.Phil., degree is eligible to get incentive increment under the scheme or not.

6. Learned Additional Government Pleader appearing for the appellants solicited our attention into G.O.No.42, Education Department, dated 10.01.1969, wherein the eligibility criteria for grant of incentive increment to the Secondary Grade Teachers are stated as under:



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<i>Category</i>	<i>Scale of Pay</i>	<i>Higher Qualification for which two advance increments are admissible</i>
<i>1.Secondary or Senior Basic Grade Teachers</i>	<i>90-4-110-5-1 40</i>	<i>B.T. or B.Ed.degree of a University in the state or the degrees of other Universities recognized as equivalent to the degree of B.T. or B.Ed. degree of Universities in this State.</i>
<i>2.BT/BEEd Assistants</i>	<i>140-5-180-10 -250 225-10-275-1 5-350</i>	<i>M.A. Or M.Sc., M.Ed.degree of a university in the state or the degrees of other universities recognized as equivalent to M.A./M.Sc., or M.Ed degree of universities of this state.</i>

2. A secondary grade teacher who after passing B.T or B.Ed. degree examination qualifies for M.A or M.Sc. or M.Ed. degree but working in secondary grade post may be given advance increments for second time also i.e.two advance increments after passing B.T or B.Ed degree and another two after passing M.A. or M.Ed degree. B.T.Teacher after passing M.A. or M.Sc. qualifies for M.Ed. Degree examination but working in B.T. or Headmasters post may be given advance increments for a second time also i.e. two advance increments after passing M.Ed. degree.



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7. Relying on the scheme of incentive increment, learned Additional Government Pleader reiterated that the analogy and logic adopted by the learned Single Judge to grant the relief to the respondent / writ petitioner is not in consonance with the scheme in force and therefore, the State has chosen to file this writ appeal.

8. Further, it is contended that the learned Single Judge, in the impugned order, has observed that when the incentive increment for acquiring M.Phil., degree was granted to the B.T.Assistants, the same has to be extended to the Secondary Grade Teachers also and such an analogy, if adopted, would result in huge financial loss to the State and moreover, every such B.T.Assistants and other teachers, who are working in the other cadres will also claim the same benefit, which will dilute the very purpose and terms of the scheme of incentive increment granted for the benefit of the teaching staff across the State of Tamil Nadu.



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9. It is further contended that incentive increment for acquiring the qualification of M.A.degree was already sanctioned and granted to the respondent and it is for the qualification of M.Phil., degree alone, the incentive increment was denied to him.

10. Learned counsel appearing for the respondent / writ petitioner objected the above contentions of the learned Additional Government Pleader by stating that the benefit of incentive increment for acquiring M.Phil., degree was granted to the B.T.Assistants and therefore the learned Single Judge made a finding that the denial of incentive increment to the Secondary Grade Teachers for acquiring M.Phil., degree amounts to discrimination. Thus, there is no infirmity in the impugned order.

11. The findings of the learned Single Judge, in Paragraph No.9 of the impugned order placing reliance on the case of ***R.Premakumari vs. State of Tamilnadu represented by its Secretary to Government, Education Department, Chennai and Others***, reported in ***(2008) 5 MLJ 1349*** is on a different set of facts and not directly connected with the issue regarding grant of incentive increment to the Secondary Grade Teachers for acquiring the



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educational qualification of M.Phil., degree. Thus, the facts of the said case are distinguishable and therefore, the said decision is of no avail to the respondent herein.

12. In Paragraph No.10 of the impugned order, the learned Single Judge has observed that the differential treatment will be in violation of Articles 14 and 16 of the Constitution of India. When the incentive increment was granted to the B.T.Assistants for acquiring M.Phil., degree, such benefit is to be extended to the Secondary Grade Teachers also. The question arises why not to the other teachers working in various other cadres. If the scope of incentive increment is expanded by the Courts, it will result in an anomalous situation, wherein the very scheme will be defeated.

13. More so, the scheme of incentive increment is a policy decision taken by the Government to provide certain concessions and to encourage the teaching staff to acquire additional educational qualifications. Therefore, such scheme / policy cannot be interfered with by the High Court by exercising the power of judicial review under Article 226 of the Constitution of India and further, it involves monetary implications.



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14. In view of the fact that the findings of the learned Single Judge is running counter to the scheme of incentive increment prevailing in the State of Tamil Nadu, which is a policy decision of the Government, we are inclined to consider the present writ appeal.

15. Accordingly, the writ appeal is allowed and the order dated 18.08.2021, passed in W.P.(MD) No.1699 of 2016, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

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NCC : Yes / No

Index : Yes / No

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