



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.09.2023

PRONOUNCED ON : 03.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

and

W.M.P.(MD)Nos.8254, 11065 of 2022 and 13964 of 2023

W.P.(MD)No.8907 of 2021:-

M.Siraiselvan

... Petitioner

Vs.

1.The Chief Educational Officer,
Theni, Theni District.

2.The Director Educational Officer,
Uthamapalayam, Theni District.

3.The Correspondent,
St.Aloysius Higher Secondary school,
Royappanpatti -625 526
Theni District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

the impugned proceedings issued by the second respondent District Educational Officer in Oo.Mu.Ni.4060/a2/2020 dated --.11.2020, quash the same and further direct the 1st and 2nd respondents herein to sanction and disburse forthwith four advance increments for possessing the higher qualification of M.A. And M.Ed Degrees admissible to the petitioner.

For Petitioner	: Ms.A.Amala
For R1 &2	: Mr.N.Ramesh Arumugam Government Advocate
For R3	: No Appearance

W.P.(MD)No.11670 of 2022:-

A.Vimala Sirumalar

... Petitioner

Vs.

1.The Chief Educational Officer,
Madurai, Madurai District.

2.The Director Educational Officer,
Usilampatti

3.The Correspondent,
R.C. Little Flower Girls Higher Secondary school,
Theni Road, Usilampatti -625 532
Madurai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent District Educational



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

Officer in A.Thi.Mu.No.5234/A3/18 dated --.02.2019, quash the same and further direct the 1st respondent CEO and 2nd respondent DEO to sanction and disburse forthwith the incentive increment (two advance increments) for the M.A. Degree admissible to the petitioner.

For Petitioner	: Ms.A.Amala
For R1 &2	: Mr.N.Ramesh Arumugam Government Advocate
For R3	: No Appearance

W.P.(MD)No.15429 of 2022 :-

Br.J.Kasmir

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 2.The Director Educational Officer,
Cheranmahadevi, Tirunelveli District.
- 3.The Correspondent,
St.Mary's Higher Secondary school,
Vickramasingapuram -627 425
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent District Educational Officer in Na.Ka.No.2728/a1/2021 dated 10.11.2021, quash the same and further direct the 1st respondent CEO and 2nd respondent DEO to sanction and disburse



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

forthwith the incentive increments (two advance increments) for the M.Phil Degree admissible to the petitioner.

For Petitioner	: Ms.A.Amala
For R1 &2	: Mr.N.Ramesh Arumugam Government Advocate
For R3	: No Appearance

W.P.(MD)No.16724 of 2023 :-

S.Arockia Samy

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 2.The Director Educational Officer,
(Secondary), Tirunelveli District.
- 3.The Correspondent,
St.Xavier's Higher Secondary school,
Palayamkottai -627 002
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent District Educational Officer in Oo.Mu.No.701/A2/2021 dated 08.04.2021, quash the same and further direct the 1st respondent CEO and 2nd respondent DEO to sanction and disburse



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

forthwith the incentive increments (two advance increments) for the M.Phil Degree admissible to the petitioner.

For Petitioner : Ms.A.Amala
For R1 &2 : Mr.N.Ramesh Arumugam
Government Advocate
For R3 : No Appearance

COMMON ORDER

These Writ Petitions are filed seeking to quash the impugned orders on various dates and to direct the District Education Officer to sanction the incentive increments to the petitioners for obtaining higher qualification degree from the date of acquiring of the respective qualifications based on the proposal of the respective schools wherein the petitioners are working.

The crux of all the four cases are tabulated as follows:-

Sl. N o.	Name of the petitioners and case no.	Date of appointment	Post of appointment	Currently working as	Date of her degree	Details of Higher degree	Date of impugned order	Impugned order
1.	16724/2023 Arokiasamy	19.06.2006	BT Assistant	PG Asst Zoology	2006 - 2007	M.Phil Zoology	08.04.2021	Could be considered for clarification for G.O.(Ms)No.37 dated 10.03.2020
2.	11670/2022 Vimala Sirumdar	02.06.2009	BT Assistant History	BT Asst History	2014 - 2015	M.A. History	--.11.2018	Prior permission no obtained before obtaining higher degree



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

3.	15429/2022 Kasmir.J	01.06.2006	BT Assistant Science	PG Botany	Asst 2007 2008	-	M.Phil Botony	--.10.2017	As the petitioner was promoted as PG Asst on 02.08.2012, he would not be eligible for incentive increment from 01.12.2007 and obtained higher degree without prior permission
4.	8907/2021 Siraiselvan	16.02.1998	Secondary Grade Teacher	Secondary Grade Teacher	Before 1998		MA Economics MA History MEd MPhil	--.11.2020	G.O.Ms.No.83 dated 28.04.2017 provides for incentive increment to the SC/ST graduate teachers appointed in Secondary grade post between 1997 to 2000 for their additional qualification notionally either from the date of appointment or date of passing of the higher qualification with monetary effect from the date of the said G.O.

2.Heard Ms.A.Amala learned counsel appearing for the petitioner who took me through each and every point substantiated in the affidavit and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents 1 and 2 who reiterated each and every defence which has been put forth in the counter affidavit and I anxiously perused the materials available on record.



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

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3. Three of the petitioners were appointed as BT Assistants and one as Secondary Grade Teacher on various dates between 1998 to 2009. All the petitioners acquired higher qualification from recognized University with prior permission of the schools concerned while in service between 1998 - 2015. Hence, the respective schools wherein the petitioners are working submitted proposals to the second respondent District Educational Officer on various dates seeking to disburse the incentive increments for higher additional qualification acquired by the petitioners respectively. However, the said proposals came to be rejected by the District Educational Officers for various reasons on various dates as detailed in tabular column supra. Challenging the impugned orders of rejection, the petitioners have filed these writ petitions.

4. The respondents 1 and 2 have filed their counter affidavit in all the four cases and the learned Government Advocate submitted that the petitioner in W.P. (MD)No.16724 of 2023 did not get prior permission to pursue M.Phil degree. However, ratification was given for the same only in the month of November 2020. In the meanwhile, the Government took policy decision to cancel the incentive increment scheme itself and issued G.O.Ms.No.37 Personal and Administrative



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

Reforms Department dated 10.03.2020. In the said G.O., it is also clarified that the cancellation of the said scheme would come to effect from the date of issuance of G.O.Ms.No.37 i.e., from 10.03.2020. The Director of School Education Department, Chennai has directed all the Chief Educational Officers and District Educational Officers to collect the various proposals and details of persons who have acquired additional qualification prior to 10.03.2020 and forwarded the same for processing and passing necessary orders in order to avoid confusions. Since the writ petitioner and the school concerned continuously insisted the second respondent to sanction incentive increment immediately, the impugned rejection order came to be passed observing that the proposal submitted by the School for sanctioning incentive increment to the writ petitioner for acquiring additional qualification of M.Phil could be processed only after getting clarification.

Submissions:-

5. With respect to W.P.(MD)No.11670 of 2022, the learned Government Advocate further submitted that the Director of School Education is the competent authority to grant prior permission to aided School teachers as per G.O.(Ms)No. 944 Education Department dated 29.07.1989. Having not challenged the said G.O., all these years, at this point of time, the respondents have no way out to consider



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

the proposal made by the third respondent school positively. Since prior permission was not obtained for acquiring higher qualification, the proposal for grant of incentive increments to the petitioner sent through the school, came to be rejected.

6.The learned Government Advocate with respect to W.P.(MD)No.15429 of 2022 submitted that the Government is not prohibiting the aided school teachers from acquiring higher educational qualification but imposes reasonable condition to obtain prior permission from the Department. Being an academic authority, it aims paramount Welfare of the pupil studying in the school. The Government has to see the teaching activities are not affected while preparing for examination and the teachers have to do a lot of homework and the teachers could not concentrate in teaching work if they pursue higher education while in service and hence, it is mandated to get prior permission before pursuing higher qualification. Since prior permission has not been obtained by the teachers concerned, the proposal came to be rejected.

7.In furtherance to the same, with respect to W.P.(MD)No.8907 of 2021, the learned Government Advocate submitted that the petitioner has filed this writ



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

petition for incentive increments after an inordinate delay of more than 17 years and such a relief cannot be granted and the same has to be dismissed for the reason of delay alone.

8.The learned counsel appearing for the petitioners submitted that the District Educational Officer has returned the proposal of the petitioner in W.P. (MD)No.16724 of 2023 stating that the proposal could be considered only after getting clarification for G.O.Ms.No.37 dated 10.03.2020. However, the District Educational Officer ought to have considered that subsequent to the G.O.(Ms)No. 37 dated 10.03.2020, a clarification order was further issued by way of G.O. (Ms).No.116 Personal Administrative Reforms Department dated 15.10.2020. Hence, rejection order is without any basis that too the question of grant of incentive increments to the teachers who have acquired higher qualification with or without any prior permission of the competent authority is no more *res integra*. In view of the same, she pressed for allowing the writ petitions.

Analysis:-

9.I have already dealt with a similar case in W.P.(MD)No.7138 of 2023 dated 28.07.2023 with respect to grant of incentive increments to teachers acquiring



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

higher qualification and has passed favorable order to the petitioner and the relevant portion of which is extracted is as follows:-

“3.The petitioners are working as B.T Assistants, Head Master and P.G Teachers in the various Higher Secondary Schools run by the Kallar Reclamation. The first petitioner is working as B.T Assistant at Government Kallar Higher Secondary School, Chennamanayakkanpatti, Dindigul District. The petitioners sought permission to pursue higher studies, namely M.Phil, by way of application through proper channel to the fourth respondent on various dates in the year 2015 and 2016. However, the said application came to be rejected. In the meanwhile, since all of them have paid fees to the educational institution concerned, they completed the course without prejudice to their respective jobs and without affecting their duty time. After completion of the course, they made another application for getting permission for acquiring a higher degree. On receipt of such an application, the fourth respondent issued a show-cause notice seeking an explanation from the petitioners on 03.12.2020. The petitioners duly gave an explanation that they have completed the said course without prejudice to their respective jobs and without affecting the duty time. Subsequent to that, on 05.11.2020, the fourth respondent issued another letter requesting all the Headmasters and Range Supervisors of his control (Kallar School) to send the details of the Teachers who were qualified in M.Phil without getting permission from the competent authority and also the list of those Teachers whose request for studying were rejected in an annexed format on or before



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

18.11.2020. On receiving the same along with the annexed format, a ratification proposal dated 18.12.2020 was sent by the fourth respondent to the third respondent recommending to issue a ratification order by accepting the explanation of all those Teachers, who studied M.Phil without permission and all those Teachers whose request for study were rejected. Since the ratification proposal was not considered, the petitioners filed a Writ Petition before this Court in W.P(MD)No. 7142 of 2021, seeking to direct the third respondent to give permission to the petitioners to pursue higher studies by issuing ratification orders based on the proposal of the fourth respondent. This Court, on 29.03.2021, following the direction in the case of J.Tamilrajan Vs. Department of School Education and others passed in W.P(MD)No.4019 of 2018, directed the respondents as follows:-

“4. By applying the ratio held in the aforesaid decision as well as various other decisions, on the same line, it can be said that the petitioners herein would be entitled for incentive increments for having possessed higher educational qualifications, even though they had not obtained prior permission of the Authorities for having undergone the course for such higher education.

5. In the light of the above observations, the third respondent herein, shall positively consider the proposal sent by the fourth respondent, recommending the candidature of the petitioners herein for grant of incentive increments for having possessed their higher educational degree, if not otherwise disqualify, in



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

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the line of the observations made by this Court and extend the benefit of incentive increment, atleast within a period of eight (8) weeks from the date of receipt of the proposal.”

4. On the failure of the respondents to comply with the same, the petitioners filed a contempt petition in Cont.P(MD)No.1042 of 2022, in which a statutory notice was also issued on 03.01.2023. On receipt of the statutory notice, the impugned order, dated 03.01.2023 has been passed rejecting the request of the petitioners to give permission to acquire higher education and recommending the candidature of the petitioner for incentive increments for having possessed their higher educational degree, on the ground that prior permission was not sought for along with the details of the course within the permitted period of time. In addition to that, the impugned order has been passed on the basis of G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020. Challenging the same, this Writ Petition came to be filed.

5. A counter-affidavit has also been filed by the respondents stating that only on the basis of their proceedings dated 19.12.2016 and G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and G.O.(Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, the third respondent rejected the petitioners claim for incentive increment. It is reiterated in the counter-affidavit that vide G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020, the sanction of advance increment to Government servants for acquiring the



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

higher qualification and for passing departmental tests was cancelled in all departments and also another G.O.(Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, passed by the same department clarified further as to the cancellation of the advance/incentive scheme in all the departments. The third respondent being the competent authority is bound to give permission or ratification only in terms of the aforesaid G.Os and in terms of the mandates of those two G.Os, the third respondent cannot give ratification and hence, the present Writ Petition is not maintainable.

6.This Court is of the considered view that the impugned order, dated 03.01.2023 passed by the third respondent is not passed in consonance with G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020. Clause 6(vi) of the said G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 is extracted as follows:-

“vi.The cases of Government servants who have acquired qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance Department.”

There is a specific mention in the said Clause that the cases of



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

Government servants who have acquired higher qualifications prior to the issue of the said G.O and were not sanctioned with advance increments would be examined separately as per the previous orders issued in concurrence with the Finance Department.

7.As far as this case is concerned, all the petitioners acquired higher qualifications before 10.03.2020 and mostly in the years 2015 and 2016. Though they have not obtained prior permission for acquiring the said qualification M.Phil, they have repeatedly requested later for ratification of acquiring the higher qualification. This issue is no more res integra and time and again, this Court has held that the petitioners would be entitled for incentive increments for having possessed higher educational qualifications even though they had not obtained prior permission from the authorities for having undergone the course for such higher education. Clause 6(vi) of G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020, also mandates that the cases of the Government servants who have acquired higher qualifications would be examined in terms of the previous orders issued. In view of the same, these writ petitioners are also entitled to incentive increments which they have acquired for the post of higher qualification.”

10.Even in the instant case, the respondents have fairly conceded in the counter stating that the petitioners have acquired the higher qualification before 10.03.2020 i.e., before the date of G.O.Ms.No.37, Personal and Administrative



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

Reforms Department. Since the said G.O., cannot operate retrospectively and since this Court has decided time and again in favour of the petitioners seeking incentive increment for acquiring higher qualification without getting prior permission from the authorities adopting the order discussed supra, I have no hesitation to hold that all the four writ petitioners are entitled to incentive increment for the higher qualification acquired by them.

11. In the light of the said observation, the impugned orders dated --.11.2020, --.02.2019, 10.11.2021 and 08.04.2021 vide proceedings in Oo.Mu.Ni. 4060/a2/2020, A.Thi.Mu.No.5234/A3/18, Na.Ka.No.2728/a1/2021 and Oo.Mu.No. 701/A2/2021 respectively are quashed and the District Educational Officer is directed to consider the proposal sent by the respective schools recommending the case of the petitioners to grant incentive increment for having acquired higher educational degree and forthwith grant the petitioners necessary incentive increment for possessing higher education degree within a period of eight weeks from the date of receipt of copy of this order.



W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

12. Accordingly, these Writ Petitions stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

03.11.2023

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

To

1. The Chief Educational Officer,
Theni, Theni District.
2. The Director Educational Officer,
Uthamapalayam, Theni District.
3. The Chief Educational Officer,
Madurai, Madurai District.
4. The Director Educational Officer,
Usilampatti.
5. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
6. The Director Educational Officer,
Cheranmahadevi, Tirunelveli District.
7. The Director Educational Officer,
(Secondary), Tirunelveli District.

17/18



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W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)Nos.8907 of 2021, 11670, 15429 of 2022 & 16724 of 2023

03.11.2023