



W.P.(MD).No.7138 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2023

PRONOUNCED ON : 28.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.7138 of 2023

- 1.D.Arulvijay
- 2.A.Olipraba
- 3.S.Gomathi
- 4.K.Indhumathai
- 5.M.Balamurali
- 6.R.Jeyakrishnan
- 7.E.Vasantha Priya
- 8.M.Latha
- 9.C.Chandramohan
- 10.K.Marimuthu
- 11.P.Arulbabu
- 12.S.Ruban Nelson Kumar
- 13.M.Tamilselvan
- 14.S.Sarasu
- 15.Suresh Kumar

... Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Department of Backward Classes, Most Backward
Classes and De-notified Communities
and Minorities Welfare,
Secretariat,
Saint George Fort,
Chennai – 9.



W.P.(MD).No.7138 of 2023

2.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Department of Finance,
Secretariat,
Saint George Fort,
Chennai.

3.The Commissioner / The Director,
Most Backward and Denotified Communities Welfare Department,
Ezhilagam,
Chennai – 600 008.

4.The Joint Director,
Kallar Reclamation,
Madurai.

... 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 of the third respondent herein in his proceedings in Se.Mu.No.B2/39/2021, dated 03.01.2023 and quash the same insofar as the petitioners are concerned and to direct the third respondent herein to sanction the incentive increments to the petitioners for obtaining the higher qualification Degree from the date of acquisition of the respective qualifications based on the proposal of the fourth respondent.

For Petitioners : Mr.G.Chandrasekar

For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader



W.P.(MD).No.7138 of 2023

ORDER

WEB COPY

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 03.01.2023 and to direct the third respondent herein to sanction the incentive increments to the petitioners for obtaining the higher qualification Degree from the date of acquisition of the respective qualifications based on the proposal of the fourth respondent.

2.Heard the learned counsel appearing for the petitioners, who took me through each and every point substantiated in his affidavit and the learned Special Government Pleader appearing for the respondents, who reiterated each and every defence which has been putforth in his counter-affidavit and I anxiously perused the entire materials available on record.

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



W.P.(MD).No.7138 of 2023

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 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



W.P.(MD).No.7138 of 2023

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



W.P.(MD).No.7138 of 2023

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 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.



W.P.(MD).No.7138 of 2023

WEB COPY

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 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.



W.P.(MD).No.7138 of 2023

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 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.



W.P.(MD).No.7138 of 2023

WEB COPY

7.Asfar 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.



W.P.(MD).No.7138 of 2023

8.In the light of the said observation, the impugned order, dated 03.01.2023 passed by the third respondent is quashed and the third respondent is directed to consider the proposal sent by the fourth respondent recommending the candidature of the petitioners herein to grant incentive increment for having possessed higher educational degree of M.Phil and forthwith grant the petitioners with the necessary incentive increments for possessing higher educational degree within a period of eight weeks from the date of receipt of a copy of this order.

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

28.07.2023

NCC : Yes
Index : Yes
Internet : Yes
ps



W.P.(MD).No.7138 of 2023

WEB COPY

To

- 1.The Secretary to Government,
Represented by the Government of Tamil Nadu,
Department of Backward Classes, Most Backward
Classes and De-notified Communities
and Minorities Welfare,
Secretariat,
Saint George Fort,
Chennai – 9.
- 2.The Secretary to Government,
Represented by the Government of Tamil Nadu,
Department of Finance,
Secretariat,
Saint George Fort,
Chennai.
- 3.The Commissioner / The Director,
Most Backward and Denotified Communities Welfare Department,
Ezhilagam,
Chennai – 600 008.
- 4.The Joint Director,
Kallar Reclamation,
Madurai.



WEB COPY



W.P.(MD).No.7138 of 2023

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in
W.P.(MD)No.7138 of 2023

28.07.2023