



W.P.(MD)No.8920 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8920 of 2018

and

W.M.P.(MD).No.8322 of 2018

S.Mahalakshmi

... Petitioner

Vs.

- 1.The District Elementary Educational Officer,
Trichy District,
Trichy.
- 2.The Assistant Elementary Educational Officer,
Thiruverumbur,
Trichy District.
- 3.BHEL Tamil Medium Middle School,
represented by its Secretary,
Kailasapuram,
Trichy – 14.
- 4.Koodapalli Sellamaniammal Middle School,
represented by its Secretary,
No.8, Sankaran Pillai Road,
Trichy -2.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of



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India praying for issuance of a Writ of Certioratified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in O.Mu.No.243/A1/2017, dated 06.02.2018, quash the same and consequently direct the respondents 1 to 3 to pay two sets of four advance increments for acquiring higher qualifications of M.A. and B.Ed., with effect from 24.07.2012 with all attendant and monetary benefits.

For Petitioner : Mr.M.Saravanan
For R1 and R2 : Mr.J.Ashok
Additional Government Pleader
For R3 & R4 : No appearance

ORDER

This writ petition has been filed challenging the impugned order passed by the second respondent dated 06.02.2018 and to quash the same and consequently direct the respondents 1 to 3 to pay two sets of four advance increments for acquiring higher qualifications of M.A., and B.Ed., with effect from 24.07.2012 with all attendant and monetary benefits.

2. The case of the petitioner is that she was appointed as Secondary Grade Teacher in the fourth respondent School in the year 1991.



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Thereafter, after obtaining prior permission from the fourth respondent School, she has completed B.A., (History). Likewise, in the year 2000, she has completed M.A., (History). As the students' strength was reduced in the fourth respondent School, the authorities have deployed the petitioner to the third respondent School, which is also an aided School. Subsequently, after obtaining prior permission from the third respondent, she has completed B.Ed., degree in the year 2012. The third respondent has forwarded a proposal to the second respondent for approval and the same was also approved by the second respondent vide proceedings dated 06.07.2013 with effect from 24.07.2012. She has been receiving the advance increment continuously. Since the arrears of advance increment for the period from 24.07.2012 to 31.12.2012 were not disbursed to her, she has made an application before the second respondent. But the second respondent has sent a proceedings dated 06.02.2018 to the third respondent School to recover the advance increment paid to her stating that without prior permission from the Department, she has studied B.A., and M.A. Challenging the same, the present writ petition has been filed.



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3. The learned counsel appearing for the petitioner would submit that the issue arise in the present writ petition is no longer *res integra* and there is no need for getting any prior permission for completion of higher qualification and the same was decided by the Division Bench of this Court in the case of ***the Director of School Education, DPI Campus, College Road, Chennai and others vs. U.Subbulakshmi and another*** in W.A. (MD).No.822 of 2021. Hence, he prayed for allowing of this writ petition.

4. The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the petitioner did not get prior permission from the Department for studying the higher qualifications. However, he was erroneously sanctioned with two incentive increments (four advance increments) for passing B.Ed., and M.A. Degrees. The second respondent came to know that the petitioner did not get prior permission from the Department as such, he issued orders directing the third respondent School Management to recover the excess amount disbursed to the petitioner by way of erroneous sanction of incentive increments vide order dated 06.02.2018. Hence, he prayed for dismissal of this writ petition.



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5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2.

6. The issue arise in the present writ petition is whether the petitioner is necessary to obtain prior permission for acquiring higher qualification. Admittedly, the petitioner was granted incentive increment and thereafter, it was sought to be recovered on the ground that the petitioner has not obtained prior permission from the Department. However, the issue arise in the present writ petition is no longer *res integra* and the same was decided by the Division Bench of this Court in the case of ***the Director of School Education, DPI Campus, College Road, Chennai and others vs. U.Subbulakshmi and another*** in W.A.(MD).No.822 of 2021. The relevant portion of the judgment reads as follows:

“7.The learned Writ Court, after considering the submission of the other side, taking note of the decision in the case of Director of Elementary Education, Chennai Vs. G.Vijayalakshmi and another reported in (2015) 6 MJ 315, allowed the writ petition. Aggrieved by the same, the Department is before us.



8. After we have elaborately heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the appellants and Mr.D.Shanmugaraja Sethupathi, learned counsel for the first respondent / writ petitioner, we are of the considered view that the order passed by the learned Single Bench is perfectly justified and calls for no interference. We had an occasion to consider a similar case, though there was a slight difference in the facts of the case in W.A.(MD).No.271 of 2021 and we have dismissed the appeal filed by the Government.

9. The case on hand is a better case on facts. Thus for the reasons assigned by the learned Writ Court, as well as the reasons assigned by us and in terms of our earlier judgments referred above, we find no good grounds to interfere with the order of the learned Writ Court.

10. After we have dictated the judgment, the learned Special Government Pleader submitted that the matter has to be placed for ratification before the Court.

11. In the facts and circumstances of the case, we find no justification for doing so because no such ratification needs to be automatic because the head of the department namely, the Director of School Education has already issued proceedings dated 18.02.2019. This should be taken note of by the appellants.



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12. Accordingly, this Writ Appeal stands dismissed.

However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.”

7. Considering the above facts, this Court is of the view that the order impugned in this writ petition is not sustainable one. Hence, the impugned order passed by the second respondent dated 06.02.2018, is quashed and the respondents 1 to 3 are directed to pay incentive increment to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

8. In the result, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.02.2023

NCC: Yes/No
Index : Yes / No
Speaking Order : Yes / No

akv



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To

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Trichy District,
Trichy.
- 2.The Assistant Elementary Educational Officer,
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Trichy District.



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M.DHANDAPANI,J.

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