



W.P.(MD) No.428 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.(MD) No.428 of 2017

and

W.M.P.(MD) No.339 of 2017

and

W.M.P.(MD) No.9512 of 2017

S.Duglas Albert Raj

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep., by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of Elementary Education,
College Road, Chennai-600 006.

3.The District Elementary Educational Officer,
Tuticorin, Tuticorin District.

4.The Additional Assistant Elementary
Educational Officer,
Saathaankulam, Tuticorin District-628 905.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorari calling for the records relating



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to the impugned proceedings issued by the 3rd respondent, District Elementary Educational Officer in Na.Ka.No.1381/A1/2016 dated 30.11.2016 (cancelling the incentive increments paid for the petitioner for his B.Ed. qualification w.e.f. 30.12.2010) and quash the same.

For Petitioner : Mr.T.Cibi Chakaraborthy

For Respondents : Mr.V.Nirmal Kumar
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

2. The petitioner is working as Assistant Elementary Educational Officer, Tiruchendur, Tuticorin District. By the impugned order dated 30.11.2016, issued by the 3rd respondent, the incentive increment paid to the petitioner was cancelled for completion of B.Ed., degree. The order further directs the petitioner to refund the excess amount received as incentive increment to the Government account. Challenging the same, the present writ petition is filed.



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3. Counter affidavit has been filed by the respondents.

4. During the course of hearing, learned Government Advocate placed a copy of an order of this Court in W.P.(MD) No.3067 of 2022, dated 23.09.2022 stating that the issue involved in this case has already been decided by this Court. The relevant portion of the said order is extracted hereinunder:

“8.I carefully considered the rival contentions and went through the materials on record. Two issues arise for consideration. The first issue is whether the fourth respondent is justified in cancelling the incentive increment granted to the writ petitioner for her having acquired the additional qualification of B.Ed. decree. The second issue is whether the respondents are justified in ordering recovery of the incentive increment already paid to the writ petitioner.

9.Let me answer the second issue first. The writ petitioner has not committed any misrepresentation. The respondents themselves had accepted her request for grant of additional



increment. The petitioner is not at all at fault. The Hon'ble Supreme Court in the decision reported in (2015) 4 SCC 334 State Of Punjab & Ors vs Rafiq Masih (White Washer) held as follows:-

“ Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the



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employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

10.It is also seen that several Middle School Headmasters who had acquired the aforesaid qualification were granted incentive increment. Therefore, even if the primary issue is answered against the writ petitioner, ordering recovery will not only be inequitable and unfair but also monstrous. This is more so because recovery is being ordered after a lapse of several years (vide Na.Ka.No. 1378/A1/2021 dated 21.12.2021). I therefore have no hesitation to hold that ordering recovery of the incentive increment already paid to the writ petitioner is to be set aside. It is accordingly set aside.

11.Now let me come to the first issue. I wanted to know on what basis, such incentive increments are granted. It appears that the foundational orders are G.O.(Ms) No.42 Education Department, dated 10.01.1969 and G.O.(Ms) No.107 Education Department, dated 20.01.1976. G.O. (Ms) No.42 Education Department, dated 10.01.1969 is as follows:-



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G.O.MS.NO.42 Education dept. dated 10th January 1969.

Education – Fourth Five Year Plan – Scheme for Incentive Payments and awards to teachers during 1968-69 Sanctioned.

Read: The following papers:-

From the Director of School Education, letter No. 186476/PDI/67
Dt. 3rd October 1967 and 26th June 68.

The Government have already accepted in principle that incentive payments and awards should be given to the teachers in schools who acquire higher educational qualifications. The Director of School Education has accordingly submitted proposals as indicated in Annexure to this order.

2. The Government approve of the proposals of the Director of School Education and direct that advance increments be granted to them as indicated in the Annexure.

3. The expenditure should be debited to '28 Education Z development schemes-Schemes in Fourth Five Year Plan- Miscellaneous –O-Incentive Payment and awards to teachers'. The Director of School Education is requested to take action to provide additional funds required by reappropriation from savings.

4. This order issues with the concurrence of the Finance Department
Vide its U.O.No.410/PIX/69-1, dt. 7th January 1969.

(By order of the Governor)

Sd/-

Secretary to Government.



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8.Other Specialist teachers.	90-4-110-5-140	B.T or B.Ed or other recognised equivalent degrees in this state.
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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.

3. The advance increments may be given from the day following the last day of the examination in higher qualification mentioned in column (3) of the table whichever is later. In case the regular increment due to person is with held by way of punishment the advance increment admissible should given only after the regular increment is sanctioned.

4. In the case of persons entering service on or after 1st july 1968 possessing the higher qualification, their initial pay may be fixed by giving advance increments in their scale of pay.

5. In the case of Panchayat unions and municipalities including corporation of Madras and townships the expenditure towards the grant of advance increments may be taken into account for purpose of payment of subsidy according to the pattern of aid admissible and no special subsidy may be paid to them. In the case of aided schools the expenditure will be taken into account for purpose of staff grant in the case of secondary schools and teaching grant in the case of elementary schools.

Sd/-

Secretary to Government.



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ANNEXURE

A teacher belonging to the category mentioned in column (1) of the Table below shall be eligible for the two advance increments in the scale of pay admissible for this category if he /she possesses or acquires higher qualification specified in column B provided the maximum in the scale of pay is not reached.

Category	Scale of pay	Higher qualification for which two advance increments are admissible
1	2	3
1. Secondary or Senior Basic Grade Teachers	90-4-110-5-140	B.T or B.Ed degree of a University in the state or the degrees of other universities recognised as equivalent to the degree of B.T or B.Ed degree of Universities of this state.
2. B.T, B.Ed Assistants	140-5-180-10-250 225-10-275-15-350	M.A. or M.Sc, M.Ed degree of a university in the state or the degree of other universities recognised as equivalent to M.A/M.Sc or M.Ed degree of universities of this state.
3. Headmasters of Govt. Board Schools and Municipal Township schools	225-10-275-15-350	---Do---
4. Headmasters Aided High Schools	225-10-275 300-15-430	---Do---
5. Pandits I Gr.	140-250 or lower scale	B.T or B.Ed degree of a university in this state or degree of other universities recognised as equivalent to B.T or B.Ed degrees of universities in this state.
6. Pandits II Gr.	90-4-110-5-140	--- Do ---
7. Physical Training Instructors, I Gr	90-4-110-5-140	B.T. or B.Ed degree of a university in this state or degrees of other universities recognised equivalent to B.T or B.Ed degree of a university in this state or Diploma in physical education



A reading of the aforesaid G.O. indicates that if a Tamil Pandit acquires B.T or B.Ed., he or she must be given an incentive payment. In this case, we are not concerned with the grant of incentive to a Tamil Pandit. We are concerned with the case of incentive granted to a Headmaster of Middle School. Of course, G.O.(Ms) No.42, dated 10.01.1969 also talks about conferring additional incentive to Headmasters. But then, they must acquire P.G. Degrees or M.Ed. If a Headmaster acquires B.Ed., grant of incentive increment is not envisaged by G.O. (Ms) No.42 dated 10.01.1969.

12.The other G.O. on which reliance is placed is G.O.(Ms) No.107 dated 20.01.1976. The said G.O. also contemplates granting of incentive increment to Tamil Pandits for acquiring higher qualification. Therefore, the said G.O. also will not come to the petitioner's rescue. Of course, the order of Hon'ble Division Bench rendered in W.A.(MD)No.435 of 2017 dated 25.04.2017 supports the contentions advanced by the learned counsel for the writ petitioner. The aforesaid writ appeal order has been extracted in extenso. The Hon'ble Division Bench was swayed by the clarification given under Right to Information Act



vide Oo.Mu.No.37606/M1/2011 dated 16.02.2012. The Secretary to Government, School Education Department, Government of Tamilnadu, Chennai – 600 006 had subsequently clarified vide Letter No. 3702/2017 dated 10.10.2017 that if any Pandit after getting promoted as Middle School Headmaster obtains B.Ed. for such persons, there is no scope for granting incentive increment. In fact, this clarificatory letter dated 10.10.2017 issued by the Government merely explains the position and it is not saying anything new. In view of this clarification letter issued by the Government, the position undergoes substantial change. In the subsequent orders issued by the various Judges also, this clarificatory letter of the Government is not taking note of.

13.More than anything else, as rightly pointed out by the learned Special Government Pleader, the post itself is called as Headmaster of Middle School (B.Ed. Grade). The petitioner of course was eligible to be promoted as Headmaster B.Ed. Grade, even though she was not having B.Ed. Otherwise, B.Ed. was held to be an essential qualification. Therefore, cancellation of the incentive increment granted to the



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writ petitioner in light of the clarificatory letter of the Government, dated 10.10.2017 is in order and it does not warrant any interference. The impugned order is quashed to the extent it orders recovery. The order cancelling the incentive increment conferred on the writ petitioner for her having acquired B.Ed. degree qualification is sustained.

14.The writ petition is partly allowed.”

5. Following the above, this Writ Petition is partly allowed.

6. There shall be no order as to costs.

7. Consequently, connected miscellaneous petitions are closed.

18.08.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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To

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State of Tamil Nadu,
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- 2.The Director of Elementary Education,
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