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W.P.(MD)Nos.16784 and 16785 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.16784 and 16785 of 2016

and

**W.M.P.(MD)Nos.12184 to 12187,
14413 of 2016 and 104 of 2017**

W.P.(MD)No. 16784 of 2016:

K.Senthil Vadivelan

... Petitioner

VS.

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
- 2.The Director of School Education,
Office of the Director of School Education,
Chennai-6.
- 3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.



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4.The Zonal Accounts Officer (Audits),
School Education Department,
Madurai-2.

5.The Headmaster,
Government Higher Secondary School,
Sathankulam, Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.42026/H/E2/2016, dated 11.06.2016 and consequential order passed by the 5th respondent in his proceedings in Na.Ka.No.82A/16, dated 27.07.2016 and to quash the same as illegal, arbitrary, violation of principles of law.

W.P.(MD)No. 16785 of 2016:

M.Muthumani

... Petitioner

vs.

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai-9.

2.The Director of School Education,
Office of the Director of School Education,
Chennai-6.



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- 3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 4.The Zonal Accounts Officer (Audits),
School Education Department,
Madurai-2.
- 5.The Headmaster,
Government High School,
Sakkarakottai, Ramanathapuram District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.42026/H/E2/2016, dated 11.06.2016 and consequential order passed by the 5th respondent in his proceedings in Na.Ka.No.169/2016, dated 25.07.2016 and to quash the same as illegal, arbitrary, violation of principles of law.

In all cases:

For Petitioner : No appearance
For Respondents : Mr.M.Ramesh
Government Advocate



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COMMON ORDER

The writ petition in W.P.(MD)No.16784 of 2016 is filed for writ of Certiorari, to quash the impugned order dated 11.06.2016 of the 2nd respondent and consequential order dated 27.07.2016 passed by the 5th respondent as illegal, arbitrary, violation of principles of law. The writ petition in W.P.(MD)No.16785 of 2016 is filed for writ of Certiorari, to quash the impugned order dated 11.06.2016 of the 2nd respondent and consequential order dated 27.07.2016 passed by the 5th respondent as illegal, arbitrary, violation of principles of law.

2. The brief facts as stated in W.P.(MD)No.16784 of 2016 are that the petitioner was appointed as B.T. Assistant (Science) in the Government Higher Secondary School on 01.06.2006. The petitioner's educational qualification is M.Sc., B.Ed., M.Phil. The minimum educational qualification to the post of B.T. Assistant is B.A., B.Ed., or B.Sc., B.Ed. As per G.O.No.1024, dated 09.12.1993, a B.T. Assistant is



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eligible for two incentive increments for getting higher qualification. As per G.O.Ms.No.42, Education Department, dated 10.01.1969, M.A., or M.Sc., M.Ed., can be considered as higher qualification for the post of B.T. Assistant and two advance increments are permissible. If the petitioner is having the qualification at the time of entering the service, their initial pay may be fixed by granting advance increments in their scale of pay. At the time of appointment, the petitioner was already possessing M.Phil., degree. Considering the said fact, on the date of appointment itself, the 5th respondent fixed the scale of pay by granting advance increments to the petitioner. The contention of the petitioner is that the Government issued G.O.Ms.No.194, dated 10.10.2006, whereby, the cutoff date fixed under the said G.O., was deleted. Therefore, the P.G. Teachers are eligible to receive incentive increments as per the Government orders and there is no cutoff date limiting their incentive increment. Subsequently, the Government issued G.O.(ID).No.18, dated 18.01.2013 and included M.Phil. and Ph.D., as higher qualification for



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B.T. Assistant. The said decision was taken considering the fact that many Universities have stopped offering M.Ed., education under open university system. On 25.03.2013, the Director of Elementary Education issued circular stating that the Teachers completed higher educational qualification in the Sastra University are eligible to receive the incentive increments as per G.O.No.42. When that being the position in Letter No. 129, dated 17.07.2013, the Principal Secretary to the Government, Education Department, fixed the date 18.01.2013 as cutoff date to receive incentive increments for M.Phil. degree is erroneous.

3. The contention of the petitioner is that the Government issued the said letter in order to clarify the previous G.O.(ID).18 and has fixed a cutoff date and the G.O.(ID)18 does not fix any cutoff date. Moreover, the previous G.O.s, have granted incentive increments for higher education. In such circumstances, the Government Letter No.129, dated 17.07.2013, is against the fundamental rules and G.O.s. Therefore,



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challenging the impugned orders the present writ petition in W.P. (MD)No.16784 of 2016 is filed.

4. The 3rd respondent has filed counter affidavit in W.P.(MD)No. 16784 of 2016 stating that G.O.Ms.No.42, dated 10.01.1969, refers to the qualification of M.A., or M.Sc., or M.Ed. and had granted incentive increment. In respect of M.Phil. and Ph.D., G.O.(1D)No.18, School Education (E2) Department, dated 18.01.2013, was issued to grant incentive increment, prior this G.O. there is no provision to grant incentive increment for M.Phil. and Ph.D. Since M.Ed. qualification was deleted and M.Phil. was included from 2013 onwards, the incentive increments can be granted only from the date of issuance of G.O.(1D)No. 18, School Education (E2) Department, dated 18.01.2013 and not prior to the said date. The petitioner was drawing incentive increment for M.Phil., from the date of appointment. Therefore, the excess was sought to be recovered through the impugned orders and it is in accordance to



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law and hence, the 3rd respondent prayed to dismiss the writ petition.

5. Heard Mr.M.Ramesh, learned Government Advocate appearing for the respondents in both writ petitions and perused the records.

6. The petitioner in W.P.(MD)No.16784 of 2016 is qualified as M.Sc., B.Ed., and M.Phil. The candidates eligible for appointment to the post of B.T. Assistants ought to possess B.A., B.Ed., or B.Sc., B.Ed., which is the basic necessary qualification for appointment in the said post. In the present case at the time of appointment, since the petitioner was having higher qualification, i.e., M.Sc., and as per the G.O.Ms.No.42 the petitioner is entitled to get one incentive increment for M.Sc. The petitioner is seeking incentive increment for M.Phil. also. It is seen that the government was granting incentive increment for M.Ed. Subsequently, the Government issued G.O.(ID).No.18, dated 18.01.2013 and included M.Phil. and Ph.D., as higher qualification for B.T. Assistant



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post. The said decision was taken considering the fact that many Universities have stopped offering M.Ed., course under open university system. Prior to the said G.O.(ID).No.18 there is no provision to grant incentive increment for M.Phil. Hence the candidates seeking incentive increment for M.Phil. qualification, then the said candidate is eligible from the date of the G.O.(ID)no.18 dated 18.01.2013 onwards. The petitioner has misconstrued the Government orders. Moreover incentive increments is only bounty which is based on policy decision of the government and the same cannot be demanded as a right. It is pertinent to state herein that once the incentive increment is granted, the said amount keeps on increases along with time scale of pay, which had severe implication on the government's exchequer. The petitioner may be entitled to incentive increment for the higher qualification of M.Sc., but for M.Phil. there is no Government orders sanctioning incentive increment prior to G.O.(1D)No.18, School Education (E2) Department, dated 18.01.2013. Therefore the petitioner is entitled to one incentive



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increment for higher qualification of M.Phil. from the date of issuance of the G.O.(1D)No.18, School Education (E2) Department, dated 18.01.2013. Infact subsequently the Government had correctly clarified the cutoff date as 18.01.2013 in Government Letter No.129, dated 17.07.2013. The date of granting incentive increment for M.Phil. degree is only from the date of issuance of G.O.(1D)No.18, School Education (E2) Department, dated 18.01.2013 and not prior to this date. At the cost of repetition this policy decision was taken since many Universities have stopped offering M.Ed. and hence in order to substitute M.Ed. degree the government had included M.Phil. degree and prior to this G.O. there is no G.O. granting incentive increment to M.Phil. degree. When there is no government order granting incentive increment for M.Phil. degree there cannot be any claim of incentive increment retrospectively. Therefore, the petitioner is not entitled to incentive increment for M.Phil., from 2006 to 2013. In the present case there was an excess payment from 2006 to 2013. Hence, the impugned orders are legally valid. The excess



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amount shall be recovered and the correct fixation shall be carried out. With this direction, the impugned orders are sustained and the respondents are directed to recover. Hence, the writ petition is dismissed.

7. As far as W.P.(MD)No.16785 of 2016 is concerned, the petitioner was appointed as B.T. Assistant in Government High School on 01.04.2003. At the time of appointment, since the petitioner was having higher qualification, i.e., M.A., and M.Phil., the petitioner is entitled to get one incentive increment for M.A. As far as M.Phil. the petitioner is entitled to incentive increment from the date of G.O.(1D)No. 18, School Education (E2) Department, dated 18.01.2013. Therefore, the petitioner is not entitled to incentive increment for M.Phil., from 2003 to 2013. Therefore, there was an excess payment from 2003 to 2013. Hence, the impugned orders are legally valid. The excess amount shall be recovered and the correct fixation shall be carried out. With this



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direction, the impugned orders are sustained and the respondents are directed to recover. Hence, the writ petition is dismissed.

8. Hence, both the writ petitions are dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

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