



W.P(MD).No.4003 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :24.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.4003 of 2016

and

W.M.P(MD).Nos.3595 & 9794 of 2016

R.Ravi Jose

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai-9.

2.The Director of School Education,
College Road, Kanyakumari District.

3.The District Educational Officer,
Thuckaly, Kanyakumari District.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records on the file of the first respondent pertaining to the Letter (MS).No.129, School Education (PR5(2) 2013-1 dated 17.07.2013 and to quash the same in so far as



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the petitioner is concerned and issue a consequential direction to the respondents to grant incentive increment for M.Phil. degree from the date following the last date of the examination.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.V.OmPrakash

Government Advocate

ORDER

This writ petition has been filed against the proceedings of the first respondent pertaining to the Letter (MS)No.129, School Education (PR5(2) 2013-1 dated 17.07.2013).

2. The petitioner was appointed as B.T. Assistant on 09.07.2004 and he joined the School at Ramnad. The 3rd respondent regularised the service of the petitioner with effect from 01.06.2006. One who has completed additional degree that is M.Phil. or Ph.D. in addition to Master degree is entitled to get 2nd incentive for the respective additional qualification. As such, the respondent by its letter bearing Lr.No.98543/k/E1/10 dated 08.12.2010 sanctioned and disbursed the amount towards 2nd incentive increment for his M.Phil. degree and thereafter, he received the arrears from the date of completion of M.Phil., degree. In the meantime, the Government had issued order in G.O.(ID)No.18 dated 18.01.2013. Subsequently, the 1st respondent had issued the impugned



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Letter(MS) No.129, School Education (PR 5(2)) 2013-1 dated 17.07.2013, in which, a clarification was issued by the government that the B.T. Assistant are entitled for the 2nd incentive increment for M.Ed. or M.Phil. or Ph.D. as per the G.O.(ID)No.18 dated 18.01.2013 and the said 2nd incentive increment shall be sanctioned from the date of issue of the Government Order i.e. with effect from 18.01.2013. By issuing the above said clarification, the Government of Tamilnadu directed that the 2nd incentive increment for BT Assistant will be given only from the date of issue of the G.O.(ID)No.18 dated 18.01.2013 and not from the date of passing the date of last examination of the degree. The contention of the petitioner is that as per Fundamental Rule 26, a government servant is entitled for incentive increment from the date following the last date of the examination of the degree. The rule further prescribes that a government servant is deemed to have acquired a degree or title from the day by following the last date of the examination. The petitioner is facing the cancellation of incentive, which was originally granted from the date of his qualification. Also, there respondents are taking steps to recover the amount. Hence, the petitioner has challenged the said order in the present writ petition.

3. Heard Mr.S.C.Herold Singh, the Learned Counsel appearing for the petitioner and Mr.V.OmPrakah, the Learned Government Advocate, appearing for the respondents and perused the records.



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4. The contention of the petitioner is that he has completed 12th Standard, completed B.A. English literature during 1988, then joined M.A. degree and completed the same during 1992. Then the petitioner had joined B.Ed. degree and successfully completed the same during 1994. He registered his educational qualifications in the District Employment Office, Nagercoil. There were vacancies for the post of B.T. Assistant and after considering the eligibility, the respondents appointed the petitioner as B.T. Assistant on 09.07.2004. The petitioner joined duty at the School in Ramnad. He was discharging his duties diligently and sincerely to the utmost satisfaction of his higher-ups. Considering the same, the 3rd respondent regularised the appointment with effect from 01.06.2006. Subsequently he was transferred to Agestheeswaram, Kurathiarai and Kandan Vilai. Thereafter, he was promoted and posted to Pudukottai during October 2015. At the time of appointment, the petitioner had completed M.A. degree. Since he is having interest in the subject and in order to improve his knowledge in the said subject, he studied M.Phil. and completed the same during 30.06.2007 and the same was registered in the respondent's register. Since he completed degree for extra qualification, he was entitled for one more incentive for his additional qualification. As such the respondents disbursed 1st incentive for M.A. degree with effect from 01.06.2006 that is from the date of regularisation. As per guidelines, one who has completed additional degree that is M.Phil. or Ph.D. in addition to Master degree, is entitled to get 2nd incentive



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for the said additional qualification. As such the respondent by its letter bearing Lr.No.98543/k/E1/10 dated 08.12.2010 sanctioned and disbursed the amount towards 2nd incentive increment for his M.Phil. degree and thereafter he received the arrears from the date of completion of M.Phil. degree that is from 30.06.2007.

5. But through the impugned order the respondents had denied the incentive increment for M.Phil. from 30.06.2007 and has stated that the petitioner is entitled to incentive increment from 18.01.2013, which is totally discriminatory and in violation of Article 14 and 16 of the Constitution of India. As per Fundamental Rule 26, the government servant is deemed to have acquired a degree or title from the date following last date of the examination of the degree. Therefore, on acquiring the degree, the petitioner is entitled for incentive increment. Moreover, after paying incentive increment for three years the impugned order of the respondent fixing date, is totally illegal. The respondents ought to have seen that while passing the G.O.(ID)No.18 dated 18.01.2013 the government has not mentioned the date of grant of incentive increment for M.Phil. or Ph.D. degree since all the teachers are entitled for incentive increment from the date following the last date of the examination. Now, the impugned clarification is introducing a limitation which is contrary to the government order issued under Article 162 of the Constitution of India. The learned counsel for the



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petitioner submits that the impugned clarification now leads to recovery of the excess amount as the 3rd respondent has instructed all the Head Masters to cancel the grant of the incentive increment. As the 3rd respondent has instructed all the Head Masters to cancel the grant of incentive increment, the Head Master of Government Higher Secondary School, Kandamalai has issued a proceeding for implementing the said order and directed to repay the amount in one lumpsum. There is no specific calculation or the amount to be paid by the petitioner and the communication is silent regarding the amount. In similar circumstances, the same communication was challenged before the Principal Bench of this Hon'ble Court in W.P.No.21910 of 2013. When the matter was taken up for hearing, interim stay of operation of the impugned order was granted. The same benefits can be extended to the petitioner.

6. The learned Government Advocate appearing for the respondents submitted that in order to encourage the teachers, the Court has issued G.O.Ms. No.42 Education Department dated 10.01.1969 for granting incentive increments. Under the scheme of incentive increments the teacher would get four in the entire service. It is further submitted that B.T. Teachers, if acquired the qualification of M.A., M.Ed. then they would be granted the first increment for M.A. and another incentive for M.Ed. Initially M.Ed. qualification is the yardstick for the second increment for a B.T. Teacher. Subsequently the course of



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M.Ed. through correspondence was stopped and Universities had introduced M.Phil. course. Hence the government issued G.O.(ID)No.18 dated 18.01.2013 granting incentive increments. Since the date of sanction was not stated in the said G.O. in order to clarify the government issued Letter No.129 School Education (SE5) (2) Department dated 17.07.2013 fixing the date of sanction from the date of issuance of G.O.(ID)No.18. and also directed to sanction one incentive increment for M.Phil. or Ph.D. subject to the condition that total number of incentive increments shall not exceed four in their entire service. It is further submitted that in G.O.(ID)No.18 School Education Department dated 18.01.2013 and as subsequently clarification in Government Letter No.129 School Education dated (SE5) (2) department dated 17.07.2013 provides that BT Assistants who have already got incentive increment for M.A. shall also be eligible for another one incentive increment for M.Ed. or Ph.D. subject to maximum of two incentive increments in service. The respondents submitted that initially the incentive increment for the M.Phil. degree was not available and it is only from G.O.(ID)No.18 the government introduced incentive increment for M.Phil. degree and hence the petitioner's claim to grant incentive increment prior to G.O.(ID)No.18 is legally not valid and hence the respondents prayed to dismiss the writ petitioner.



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7. After hearing the rival submission this Court has anxiously considered the rival submissions. The government has issued G.O.Ms. No.42 Education Department dated 10.01.1969 and granted incentive increment for higher qualification. In the said G.O. the higher qualification for B.T. Assistant is M.A., M.Sc. and for which incentive increment was granted. Subsequently the government issued G.O.Ms.No.1024 Science Education and Technology Department dated 09.12.1993 wherein the higher qualification of M.Ed. was included and granted incentive increment. The G.O.(ID)No.18 School Education (E2) Department dated 18.01.2013 was issued granting incentive increment for M.Phil. degree. The reason stated for granting incentive increment for M.Phil. is that incentive increment was granted M.Ed. degrees which was offered through correspondence course but the Universities have dispensed with the said course and introduced M.Phil. degree course from the year 2010 onwards, hence there is no opportunity for teachers to obtain incentive increment M.Ed. degree from 2010 onwards. Hence the government decided to grant incentive increment for M.Phil. or Ph.D. degrees. Hence the Government issued orders vide G.O.(ID) No.18 dated 18.01.2013 enabling the teachers to get incentive increments for acquiring M.Phil. or Ph.D. degrees. However, while issuing the G.O. the government had not mentioned from which date the G.O. would come into



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effect. Taking advantage of the same the teachers started claiming incentive increments from the date prior to the date of the G.O. Hence it was necessary to issue clarification for G.O.(ID)No.18 dated 18.01.2013. And the Government has issued Government letter (Ms) No.129 School Education (SE5 (2)) department dated 17.07.2013 and clarified that the teachers are eligible for claiming incentive increment for M.Phil. degree from the date of issuance of G.O.(ID)No. 18 i.e. 18.01.2013. After taking the facts and circumstances of dispensing the course of M.Ed., the government had granted incentive increment for M.Phil. degree and therefore, this Court is convinced of the reasons and there is no illegality in fixing the date as 18.01.2013. The Petitioner has not raised any legally valid ground to quash the impugned proceeding. The G.O. and the clarification issued by the 1st respondent is valid in law and hence the same is upheld.

8. The next contention is that the teacher is eligible from the date of completion of the course as per FR 26. The petitioner had completed the course of M.Phil. on 30.06.2007, but on that date there is no government order which enables to grant incentive increment for M.Phil. degree. If the plea of the petitioner is accepted then incentive increment would have to be paid by the



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respondent without any authority to pay. In other words, the petitioner is claiming without any right to claim. Moreover, any Government Order would come into effect from the date of the issuance of the order and it cannot be given retrospective effect, unless it is specifically mentioned thereunder. In the present case the government had issued clarification in Letter Ms.NO.129 that the incentive increment is applicable for M.Phil. only from the date of the G.O. (ID)No.18 i.e. from 18.01.2013. The FR 26 is applicable for all the department tests and when the employee had completed the examination and pass the examination, then the employee is entitled to the incentive increment from the date of completion of the examination. The petitioner is trying to confuse by referring to FR 26.

9. The next contention of the petitioner is that the respondents cannot recover the amount, since there is no misrepresentation on the part of the petitioner. In the present case it is not the question of misrepresentation, it is the question of eligibility, when the petitioner is not eligible then the petitioner is not entitled to. Moreover, the petitioner is still in service and there is no difficulty in repaying the amount. Therefore, the petitioner plea cannot be accepted.



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10. For the reasons stated supra the impugned order is sustained and the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No

Index : Yes/No

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