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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.962 of 2016

and

W.M.P. (MD)Nos.767 and 5095 of 2016

A.Babu Selvaraj ... Petitioner
vs.
1.The Director of School Education,
Chennai-6.
2.The District Educational Officer,
Sivagangai, Sivagangai District.
3.The Head Master,
The Government High School,
Alavindankan, Sivagangai District. ... Respondents

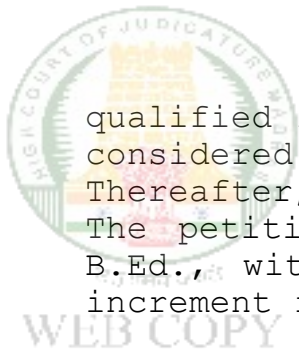
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 3rd respondent in his proceedings Na.Ka.No.115/205, dated 22.12.2015 and to quash the same and to direct the respondents to confer all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.V.Om Prakash
Government Advocate

O R D E R

This writ petition is filed for writ of Certiorarified Mandamus, to quash the order dated 22.12.2015 passed by the 3rd respondent and to direct the respondents to confer all the consequential benefits.

2. The petitioner was possessing 10th, 12th standard and C.PED., (Certificate of Physical Education) and based on this qualification the petitioner was appointed as a Physical Education Teacher on 29.11.1996 and posted at Government Higher Secondary School, Pudumadam, Ramanathapuram District. Thereafter, he was transferred to Government High school, Sanaveli on 19.06.1998. During 1999 to 2002, the petitioner studied B.A.(History), during 2007-2009 M.A. (History) and during 2009-2011 B.Ed. Since the petitioner is fully



qualified for promotion to the post of B.T. Assistant, his is considered and he was promoted as B.T. Assistant on 31.07.2012. Thereafter, he was transferred to the present school on 03.06.2013. The petitioner was sanctioned one set of incentive increment for B.Ed., with effect from 21.07.2011 and another set of incentive increment for M.A., qualification with effect from 01.10.2012.

3. The contention of the petitioner is that he is entitled to get two sets of incentive increment. The 3rd respondent passed an order of recovery on 22.12.2015 stating that incentive increment for B.Ed., was wrongly sanctioned. Aggrieved over the said recovery order, the present writ petition is filed.

4. At the time of admission, this Court has granted an interim stay for the recovery alone.

5. The 2nd respondent has filed a counter affidavit along with vacate stay petition. The contention of the 2nd respondent is that the 1st respondent through his proceedings, dated 14.12.2015, modified his earlier proceedings by fixing cutoff date to sanction incentive increment for the Physical Educational Teacher for qualifying with B.T. or B.Ed., It is mentioned that those qualification should have been obtained before the issuance of G.O.Ms.No.624, Education Department, dated 13.07.1992. The petitioner is qualified with B.Ed., in the year 2011 and in his Service Register it is recorded that he got Physical Education Teacher qualification on 12.07.1993. Since the G.O. specifically states that it is applicable for the persons who had acquired qualification prior to 13.07.1992, since the petitioner had acquired the qualification subsequently, hence, the petitioner is not eligible to increment. After receiving the impugned order, the petitioner did not submit any explanation. Therefore, the 2nd respondent submitted that the petitioner cannot agitate the same before this Court and prayed to dismiss the present writ petition.

6. Heard Mr.V.Panneer Selvam, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents and perused the records.

7. It is seen that the petitioner has completed C.PED., and was appointed as Physical Education Teacher on 29.11.1996. Under G.O.Ms.No.42, Education Department, dated 10.01.1969, under category 7 the Physical Training Instructors Garde I is entitled to incentive increment. However, in G.O.Ms.No.624, Education Department, dated 13.07.1992, it is stated that the Physical education teacher incentive increments will be sanctioned in future only in the area of Physical Education with a view to upgrade physical training and the Director of School Education would identify the courses in this area also. Moreover for appointment of Physical Education teacher the C.Ped. is the basic qualification, it cannot be considered as higher qualification and hence the petitioner is not entitled to

<https://www.mca.gov.in> increment for C.Ped.



8. The petitioner had qualified B.A.(History), M.A.(History) and B.Ed. The respondents have granted incentive increment for M.A. The respondents have granted incentive increment for B.Ed., but through the impugned order it is stated that the petitioner is not entitled increment for B.Ed. based on subsequent clarification in G.O.Ms.No.624 dated 13.07.1992 and it is directed to recover the excess amount paid for the period from 21.07.2011 to 30.11.2015. The Learned Counsel appearing for the petitioner submitted that the G.O.Ms.No.42, Education Department, dated 10.01.1969, under category specifically states that Physical Training Instructors are entitled to incentive increment for acquiring B.T., or B.Ed.

9. On perusal of the said two G.O.'s this Court is of the considered opinion that there is no clarity, hence this Court is remitting the case back to the authority for reconsideration. The respondents shall consider the case of the petitioner and pass orders within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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/07/2023

Sub Assistant Registrar(CS)

Tmg

To

1.The Director of School Education,
Chennai-6.

2.The District Educational Officer,
Sivagangai, Sivagangai District.

3.The Head Master,
The Government High School,
Alavindankan, Sivagangai District.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-18603[F] dated
30/03/2023)

+1 CC to M/s.SPL.GP (SR-18874[F] dated 31/03/2023)

W.P.(MD) No.962 of 2016
30.03.2023

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