



*W.A.(MD).Nos.2124, 1526, 1527, 1819 & 1820 of 2023, 754 to 756 of 2018, 518, 519, 525, 529 & 530 of 2020,
1804 of 2021 and 657 & 1016 of 2022*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 20.12.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD) Nos.2124, 1526, 1527, 1819 & 1820 of 2023, 754 to 756 of 2018, 518,
519, 525, 529 & 530 of 2020 and 657 & 1016 of 2022

and

C.M.P.(MD).Nos.16996, 11736, 11737, 13822, 13824 of 2023, 4491, 4492 &
4493, 4494 & 4495 of 2018, 3651, 3652, 3666, 3691, 3692 of 2020, 5552 and
8171 of 2022

W.A.(MD)No.2124 of 2023:

S.Duglas Albert Raj

.. Appellant

Vs.

- 1.The State of Tamil Nadu,
Represented 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.



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

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 18.08.2023 made in W.P.(MD) No.428 of 2017 on the file of this Court.

For Appellant : Mr.VR.Shanmuganathan

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM,J.***)

These intra-Court appeals are filed against the orders dated 18.08.2023, 02.06.2022, 02.06.2022, 23.09.2022, 23.09.2022, 21.03.2017, 21.03.2017, 21.03.2017, 18.09.2019, 18.09.2019, 18.09.2019, 17.09.2019, 17.09.2019 and 10.01.1969 passed in W.P.(MD) Nos.428, 22272, 22271 of 2017, 4437, 3067 of 2022, 14427 to 14429 of 2013, 10464 to 10466, 13614, 13615 of 2017 and 24997 of 2018.

2. The issues raised before us is whether the writ petitioners are entitled to claim incentive increment for acquiring B.Ed., qualification under the Scheme of Incentive Increment in force.



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3. With reference to the issues, we have to consider the policy of the Government, which was first time introduced in G.O.Ms.No.42, Education Department, dated 10.01.1969. The scheme for incentive payment and awards to teachers were granted in order to encourage them to acquire higher educational qualification for the purpose of imparting better education to the children in Government and Government Aided Schools across the State of Tamil Nadu. The said G.O.Ms.No.42, Education Department, dated 10.01.1969, unambiguously stipulates that “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.**”

4. Para 2 of Annexure to G.O.Ms.No.42 reads as under:

“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. decree and another two after passing M.A. or M.Ed. decree. B.T. teacher after passing M.A. or M.Sc. qualifies for M.Ed. decree 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.**”



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5. With reference to the policy of the incentive increments sanctioned by the Government, we have gone through the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service and Annexure to Rule 6 (b)(i) provides basic qualification for promotion to the Headmasters / Headmistress of Middle School reads as under:-

“1. A degree of any University or a Degree of Equivalent Standard and B.Ed., Degree of any University.

or

2. (a) A degree in Tamil of any University;”

It is not in dispute that one of the basic qualification for promotion to the post of Headmaster Middle School is B.Ed. Therefore, the basic qualification cannot be construed as an eligible qualification for the purpose of grant of incentive increment since the Scheme itself contemplates the benefit of incentive increment is to be granted only for acquiring higher educational qualifications.

6. Learned counsel for the Writ Petitioners would submit that the Director of Elementary Education issued clarification on 07.06.1991 and on 03.12.2010, stating that the Middle School Headmasters acquiring B.Ed. Qualification is eligible to draw incentive increments for B.Ed. qualification.



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7. We found that the said argument is unacceptable in view of the fact that the parent Government Order implementing the Scheme would reveal that incentive increment is to be granted only for acquiring higher educational qualification and not for basic qualification which all are otherwise contemplated as an eligible criteria in the Rules. The said clarifications dated 07.06.1991 and 03.12.2010, cannot supersede the Government Order issued in G.O.Ms.No.42, Education Department, dated 10.01.1969, which was issued under Article 163 of the Constitution of India by the order of the Governor. Therefore, the policy decision of the Government will prevail over the qualification issued by the Subordinate Authorities namely, in the present case, the Director of Elementary Education. When the policy of the Government unambiguously stipulates that the incentive increments are to be granted for acquiring higher educational qualification and in the present case M.Ed. being considered as a Higher Educational Qualification for drawal of incentive increments, we are unable to agree with the arguments of the writ petitioners that B.Ed. degree also to be considered as a eligible qualification for grant of incentive increment.



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8. It is not in dispute that the writ petitioners have acquired the qualification only after their promotion to the post of Middle School Headmaster and therefore, the writ petitions are not entitled for incentive increments for the qualification acquired after becoming Middle School Headmasters. However, the excess payment if any made already need not be recovered from him, since there was no misrepresentation on the part of the writ petitioners. More so, such incentive increments were wrongly granted at the instance of the Director of Elementary Education or the Subordinate authorities by wrongly interpreting the Government Policy.

9. Thus, we are in agreement with the learned Single Judge regarding setting aside the recovery alone. However, it is made clear that the writ petitioners are not entitled for incentive increments for the qualification of B.Ed., degree. Accordingly, the re-fixation done by the competent authorities stands confirmed.

10. Accordingly, W.A.(MD) Nos.2124, 1526, 1527, 1819, 1820 of 2023 filed by the Writ Petitioners stand dismissed and the orders dated 18.08.2023, 02.06.2022, 02.06.2022, 23.09.2022, 23.09.2022 in W.P.(MD) Nos.428, 22272,



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22271 of 2017, 4437, 3067 of 2022 stands confirmed. W.A.(MD) Nos.754 to 756 of 2018, 518, 519, 525, 529, 530 of 2020 and 657 of 2022 filed by the State stand allowed and the order 21.03.2017, 21.03.2017, 21.03.2017, 18.09.2019, 18.09.2019, 18.09.2019, 17.09.2019, 17.09.2019, 25.01.2022 passed in W.P.(MD) Nos.428, 22272, 22271 of 2017, 4437, 3067 of 2022, 14427 to 14429 of 2013, 10464 to 10466, 13614, 13615 of 2017 and 3697 of 2018 are set aside. In respect of the Writ Appeal in W.A.(MD) No.1016 of 2022, since the request of the respondent for incentive increments for acquiring both B.Ed. and M.A. degrees, he is entitled to incentive increment only for acquiring M.A. degree as per G.O.Ms.No.42, Education Department, dated 10.01.1969, the Writ Appeal is partly allowed and W.P.(MD) No.24997 of 2018 is dismissed in respect of the incentive increment for acquiring B.Ed. qualification and allowed in respect of acquiring M.A. degree qualification. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) & (V.L.N.,J.)
20.12.2023

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



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S.M.SUBRAMANIAM,J.

and

V.LAKSHMINARAYANAN,J.

SJ

To

- 1.The State of Tamil Nadu,
Represented by its Secretary,
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- 2.The Director of Elementary Education,
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