



W.P.Nos.1605 of 2024 etc., batch cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.Nos.1605, 1239, 212, 536, 664, 936, 1409 & 1416 of 2024 & 33590,
33954, 34413, 34363, 34504, 35047, 35315, 35896, 35959, 35962, 35963,
35964, 35965, 35967, 35968, 35970, 35971, 35972, 35986 35997, 36234,
36242, 36256 of 2023

and

W.M.P.Nos.248, 250, 536, 537, 687, 689, 976, 977, 1280, 1281, 1435,
1436, 1442, 1634, 1636, of 2024 & 33837, 34411, 34412, 34271, 34335,
35003, 35283, 35285, 35955, 35959, 35960, 35896, 35898, 35961, 35962,
35963, 35964, 35965, 35966, 35967, 35974, 35981, 35982, 36223, 36239,
36255 of 2023

W.P.No.1605 of 2024

1. S.Moorthy
2. S.Saradha
3. M.Revathi
4. V.Pandiammal
5. R.Santhi
6. V.Dhanabakkiam
7. A.Sakunthala
8. L.Anitha
9. P.Gnana Janet Geetha
10. A.Mariaraj
11. K.Sudaroli
12. E.Muthayal
13. S.Begum Bara
14. R.Revathi
15. T.Logeswari



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16. D.Mohanambigai
17. P.K.Thilagam
18. T.Gomathi
19. R.Balasubramanian
20. S.Jansi
21. P.Josephine Regina Mary
22. K.Vijayalakshmi
23. M.Suganya
24. P.Manokaran
25. M.Mumtaj
26. R.Vasudevan
27. I.Padmavathi
28. C.Jothilakshmi
29. A.M.Moorthy
30. R.Kavitha
31. T.V.Kalpana
32. V.Chandrasekaran
33. S.Vignesh
34. P.Sampoornam
35. M.Sudha
36. K.Sridhar
37. R.Thenmozhi
38. P.Anancia
39. N.Nandhini Devi
40. T.Rajalakshmi
41. A.Aruldoss
42. K.Gracy
43. U.Muthuvijayan
44. S.Nithyakala
45. R.Sankar
46. M.Senthilkumar
47. G.Ezhil Padmavathi
48. S.Malathy
49. K.T.Sathishkumar
50. C.Sheela

...Petitioners



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-Vs-

WEB COPY

1. The State of Tamilnadu,
Represented by its Chief Secretary to Government,
Human Resources Management (FR.IV) Department,
Fort. St. George,
Chennai-600 009.
2. The State of Tamilnadu
Represented by its Secretary,
Personnel and Administrative Reforms Department,
Fort., St., George,
Chennai-600 009.
3. The Director,
Tamilnadu Government Audit Department,
Directorate No.571, Officers Building,
Veterinary Hospital Campus,
4th Floor, Anna Salai,
Nandanam, Chennai-600 35.
4. The Joint Director (Personnel)
School Education Department,
DPI Complex, College Road,
Chennai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in G.O.Ms.No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023 and quash the same in so far as the said government order has in Para 7 and 8 made an unreasonable classification violative of Article 14 of the Constitution between claims for additional



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incentive for having acquired the additional qualification prior to 10.03.2023 which are pending or not made as on 10.03.2020 being the date of G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department and claims for additional incentive which have already been processed and sanctioned prior to 10.03.2020 will be continued to receive incentive in the salary and consequently direct the 1st respondent to grant the 1st or 2nd incentive, as the case may be, for the petitioners who have acquired additional qualification prior to 10.03.2020 and eligible for sanction of advance increment in their salary.

For petitioners	: Mrs.Nalini Chidambaram Senior counsel for Mrs.C.Uma
For Respondents 1 to 4	: Mr.R.Neelakandan, Additional Advocate General Assisted by Dr.T.Seenivasan, Special Government Pleader

COMMON ORDER

These writ petitions have been filed for challenging the G.O.Ms.No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023 in so far as related to the said Government Order in Para 7 and 8 thereby cut-off date for sanction of advance increments for having



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acquired higher educational qualifications ended and the new scheme of sanction of lumpsum amount is ordered to take effect from 10.03.2020, thus, the clarification issued in Government order and the Government Letter are harmonized to ensure that, all pending applications as on 10.03.2020 and claims made subsequently for sanction of benefits for having acquired higher educational qualifications shall be disposed as per this new scheme of granting lump-sum incentives only and not the earlier scheme of granting increments in salary.

2. All the petitioners are working as teachers in the High Schools and Higher Secondary Schools. The Joint Director (Personnel), School Education Department granted permission to several B.T. Assistants working in High Schools and Higher Secondary Schools by its proceedings dated 11.12.2017 stating that to pursue Higher Education in Universities on part time basis provided the higher education is relevant to their career. As per G.O.Ms.No.18, School Education(E2) Department dated 18.01.2023, teachers will be eligible for two incentives in their salaries for Higher Education. Accordingly, the petitioners had completed their higher



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education in various universities before 10.03.2020. Subsequently, Government passed order in G.O.Ms.No.37, Personnel and Administrative Reforms (FR IV) Department, dated 10.03.2020, thereby as a policy decision, the sanction of advance increment for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment of possessing higher qualification as a whole be cancelled/dispensed with immediate effect. As per G.O.Ms.No.531, Finance Department, dated 25.04.1963 thereby introduced the scheme of sanction of advance increment for passing Account Test examination to the Non-Gazetted Government Servants in the Ministerial service. Based on the recommendation of the Tamilnadu 2nd Pay commission, the scheme of sanctioning advance increment for acquiring post graduate degree of Master of Management Sciences from recognized institutions and MBA degrees was extended to other services. Subsequently, G.O.Ms.No.843, Personnel and Administrative Reforms (FR II) Department, dated 05.09.1983, the department had issued a consolidated order for sanction of lumpsum grant (instead of advance increments) for acquiring some of the specialized courses in PG/Ph.d/MBA etc., in certain departments subject to fulfilment of



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certain conditions stipulated therein. Later, by G.O.Ms.No.1159, Personnel and Administrative Reforms (FR II) Department, dated 21.11.1984, the scheme of lumpsum grant was again replaced with sanction of advance increment. As per G.O.Ms.No.97, Personnel and Administrative Reforms (FR IV) Department, dated 05.07.2010, it was issued in order to avoid misinterpretations stipulating some conditions for sanction of advance increment.

3. As per G.O.Ms.No.241 Finance (PC) Department dated 26.10.2020 thereby accepting the recommendation of the pay Grievance Redressal Committee constituted for the purpose of examining anomalies which arose due to the implementation of Tamilnadu Revised Scales of Pay Rules 2009 dispensing the higher start of pay granted to the Junior Assistants/Typists/Record Clerks for degree qualification/SSLC qualification to the incumbents recruited in future with a view to avoid pay anomaly between Junior Assistants and the Directed recruited Assistants. The Government further reviewed the scheme of sanction of advance increments and had taken policy decision thereby cancelled/dispensed with the scheme of advance increment for acquiring higher qualification and



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passed G.O.Ms.No.37, Personnel and Administrative Reforms (FR IV)

Department, dated 10.03.2020. Accordingly, in various departments who had acquired higher qualification prior to 10.03.2020, were sanctioned for advance increments. As per G.O.Ms.No.120, Human Resources Management Department dated 01.11.2021 thereby granted incentive in the form of one time lump sum amount to the State employees for having acquired additional qualification after 10.03.2020. It was ordered on the basis of decision taken by Government of India based on the 7th Central Pay Commission recommendations i.e., to grant a one time lumpsum incentive to the relevant higher educational qualification. The Government of Tamilnadu had issued G.O.Ms.No.95, Human Resources Management Department, dated 26.10.2023 thereby issued guidelines by granting one lumpsum amount for acquiring additional educational qualification to the State Government employees. Further stated that the cut-off date for sanction of advance increments for having acquired higher educational qualification ended by issuance of G.O.Ms.No.37, dated 10.03.2020 and the new scheme of sanction of lump-sum amount was ordered to take effect from 10.03.2020. Further, all the pending applications as on 10.03.2020



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and claims made subsequently for sanction of benefits for having acquired higher educational qualification shall be disposed of as per the new scheme of granting incentives in salary and in order to maintain parity and equal treatment pending as on date and for the persons acquiring higher educational qualifications in future.

4. Mrs.Nalini Chidambaram, learned Senior Counsel appearing on behalf of the petitioners submitted that a classification has been made between applications already made by teachers and processed granting incentives for higher educational qualifications acquired prior to 10.03.2020. As per G.O.Ms.No.37, dated 10.03.2020 and applications of Government Servants who have acquired Higher qualification prior to 10.03.2020 for incentive pending as on 10.03.2020 are due to belated claims by the individuals. Whereas G.O.Ms.No.95, dated 26.10.2023, the 2nd category i.e., Government Servants who had acquired qualification prior to 10.03.2020 are ineligible for advance increment and they are eligible only for lump-sum amount, which is arbitrary and violative of Article 14 of the Constitution of India. She further submitted that Government Servants who



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acquired higher qualification after 26.10.2023 and the Government servants who had acquired higher qualification prior to 10.03.2020 are to be treated equally. If not treated equally, it results in unequals being treated equally violating Article 14 of the Constitution of India. She further submitted that all the petitioners had acquired their additional educational qualifications prior to 10.03.2020. Their applications for claim of advance incentive were not processed and were kept pending due to administrative reasons or belated claim by the individuals. Therefore, it is not the fault of the petitioners and they cannot be treated unequally and it is violative of Article 14 of the Constitution of India. The petitioners had acquired higher educational qualification and it will help them in improving their teaching method. They are seeking only parity of treatment with candidates whose application for incentive for higher qualification have been already processed and granted benefits on or before 10.03.2020 and the case of the petitioners who have acquired the higher qualification prior to 10.03.2020 and claims for incentive were either not made or not processed before 10.03.2020 but kept pending. Therefore, the Government servants who had acquired higher educational qualification after 26.10.2023 and thus who had acquired higher



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qualification prior to 10.03.2020 are treated equally resulting in unequals being treated equally violating of Article 14 of the Constitution of India.

Therefore, the Government servants who had acquired higher qualification prior to 10.03.2020 should be treated separately and incentives in their salary should be sanctioned.

5. On instructions, the learned Additional Advocate General for the respondents submitted that in pursuant to the decision of Government of India based on the recommendation of 7th Central Pay Commission, the Government of Tamilnadu had taken decision to restore one lumpsum payment for acquiring higher qualifications. Accordingly, Government of Tamilnadu passed G.O.Ms.No.120, Human Resources Management (FR-IV) Department, dated 01.11.2021, for granting incentive in the form of one time lumpsum amount to the State Government employees for having acquired additional qualifications after 10.03.2020 for Ph.D Rs.25,000/- for P.G. Degree or Equivalent-Rs.20,000/- and for Degree/Diploma-Rs.10,000/. Thereafter, G.O.Ms.No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023 has been passed based on the decision of the



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Government of India. The petitioners' claim made before 10.03.2020 and they were kept pending and not processed before 10.03.2020. Having kept quiet, from the year 2020, now they cannot challenge after four years. It is a policy decision and the same cannot be challenged unless there is arbitrariness or illegality, once the policy decision is accepted by the petitioners and admittedly not under challenge. In so far as the entire government orders and G.O.Ms.No.120, Human Resources Management (FR-IV) Department, dated 01.01.2021 are concerned the guidelines issued by the Government to implement, the said policy decision cannot be challenged. As per G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020, the entire scheme itself has been taken away. During that point of time itself, the claims of the petitioners have come to be closed. Since they were not granted any advance increment after completion of their higher educational qualification, the petitioners claim that they have acquired higher qualification before 10.03.2020 on which date G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 order passed, whereby the scheme of advance incentive has been cancelled and all orders in this regard



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have been dispensed with. While so, the claim of the petitioners have lapsed immediately after the said Government order. But, the petitioners did not pursue their claim for the past four years. After issuance of guidelines by the G.O.Ms.No.95, Human Resources Management Department dated 26.10.2023, the petitioners approached this court. He further submitted that it is settled proposition of law that a policy decision by a competent authority would not come within the purview of a judicial review. The courts should resist itself from embarking upon a venture over decision reached on a consideration of relevant materials. The policy decision can only be challenged on the ground of illegality, as being contrary to law or any constitutional provision. In this case, no such grounds are made out for judicial review.

6. Heard, the learned counsel appearing on either side and perused the records.

7. The scheme of advance increment was introduced by the recommendation of Madras Pay Commission in the name of "Scheme of



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CASH REWARDS" during the year 1960. Further it had suggested that such a scheme of cash rewards may be extended to other important departments also in respect of tests which may be considered to be of crucial importance in those departments. Based on the suggestion of the Madras Pay Commission, the Government introduced the scheme of sanction of advance increment for passing the Account Test Examination to the non- Gazetted Government Servant in the Ministerial Service vide G.O.Ms.No.531, Finance Department, dated 25.04.1963. Subsequently, based on the recommendation of the Tamil Nadu Second Pay Commission, the erstwhile Public Works Department, (ie before bifurcation) in G.O. Ms.No.1195, dated 11.07.1972, had issued orders sanctioning / granting advance increments to the Assistant Engineers / Executive Engineers / Divisional Engineers of Public Work and Highways and Rural Works Departments for acquiring PG/Ph.D in Engineering degree as below:

- Two increments for PG in Engineering
- Three increments for Ph.D in Engineering



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8. In G.O. (Ms) No. 825, Personnel and Administrative Reforms

(FR-I) Department, dated 06.07.1977, orders were issued sanctioning two advance increments for those who acquire post graduate degree of Master of Management Sciences from recognized Institutions. This was then extended to MBA holders also vide G.O.(Ms) No.1195, Personnel and Administrative Reforms (FR-I) Department, dated 27.10.1978.

9. Pursuant to the above orders, similar orders were also issued by various other departments like Agriculture Department, Animal Husbandry and Veterinary Sciences Department, Health and Family Welfare Department, Education Department, Labour and Employment Department, Rural Development Department etc., for sanctioning advance increments to certain category of staff of those Departments for acquiring Post Graduate / Ph.D degrees in their respective subjects (These orders are made applicable to only certain category of posts mentioned in those orders and not for all category of posts in those Departments). During the year 1983, the scheme of sanction of advance increment was replaced by a scheme of Lumpsum grant. 1st Respondent had issued a consolidated order for sanction of



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Lumpsum grant (instead of advance increments) for acquiring some of the specialized courses in PG/Ph.D/ MBA etc., in the following Departments viz.. Agriculture Department. Agricultural Engineering, Diary Development Department, Animal Husbandry Department, Health and Family Welfare Department, Home Department, vide G.O. (Ms) No.843, Personnel and Administrative Reforms (FR-II) Department, dated 05.09.1983

10. Later, the above scheme of grant of lumpsum grant was again replaced with sanction of advance increments in G.O. (Ms) No. 1159, Personnel and Administrative Reforms (FR-II) Department, dated 21.11.1984. However, in this order, the conditions referred above were not included and this has made some Head of the Departments to seek clarifications as to whether the said conditions are to be followed for sanction of advance increments or not.

11. Therefore, the Government in Letter No.23270/85-1. Personnel and Administrative Reforms (FR-I) Department, dated 06.05.1985 has issued clarification. The Government had issued another



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order stipulating the same conditions that were clarified in the above said letter in the form of a Government Order vide G.O.(Ms) No.97, Personnel and Administrative Reforms (FR-IV) Department, dated 05.07.2010. However, while issuing the said order, it was ordered that it will take effect from the date of issuance of orders.

12. The evolution of the scheme of sanction of advance increment clearly indicates the following aspects:-

a) During the period of introduction of above scheme, qualified persons are rarely identified for Government Posts. But, in present days, highly qualified persons including many professionals (Doctors and Engineers) are entering Government Service through the concerned recruiting agencies for Group A and B Posts and even for Group C posts like Assistants / Junior Assistants/Typists etc. to do clerical jobs.

b) During this period of more than half century from 1960's. Educational Institutions / Colleges have increased numerously and the qualified candidates are also increased multifold.



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c) Various recruiting agencies are selecting qualified persons suitable for the various posts in Government Service after conducting the tests / examinations at various stages.

d) Qualified persons are available in all the fields to fill up the higher promotional post in order to discharge duty of the post efficiently.

e) If a Government Servant needs promotion / appointment to a higher post which carries higher qualification then it is the responsibility of the Government Servant to qualify himself / herself for promotion / appointment to that higher post.

13. The permission is required to take up study courses/ further higher studies under the Tamil Nadu Government Servants Conduct Rules, 1973, so as to perform the duties of the post continuously without seeking any excuse on the basis of such higher studies (ie) permission is given to take up higher studies without detrimental to the official duties performed by the individual. The intention of the petitioners herein is that they have studied PG degree is for only getting advance increment and their intention is not for improving their own knowledge or to contribute the department's



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growth, has not been indicated. Further, mere grant of study permission will not confer any right to the petitioners for the grant of advance increment. As per the guidelines issued by 1st respondent, mere possession of higher qualification is not the criteria for sanction of two advance increments but the utilization of the higher qualification possessed by the individual for that Department is the criteria. Further, the writ petitioners being Teachers in Elementary / Middle / Higher Secondary schools are eligible for promotion to PG Assistant only when they are qualified with PG degree in the relevant field. The Scale of pay attached to those posts are fixed with reference to their qualification only. In as much as, higher scale of pay is prescribed for higher post having higher qualification, then sanction of another benefit in the form of advance or incentive increment is considered not necessary, since the said benefit was included in the higher scale of pay itself. Introducing a new scheme or modifying the existing scheme or cancelling / withdrawing / dispensing the existing scheme are dependent on the policy of the Government. Policies on monetary benefits are always taken only on the advice of Finance department. Any forced decision may worsen the status and create chaos in administration. Previously, the policy of the Government



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was to sanction of Advance increment for acquiring higher qualification, because the Government was in search of qualified hands at that time. But, subsequently, when it is noticed that the qualified hands are available in multifold, the need for review of the scheme was felt and accordingly it was reviewed and decided to cancel / dispense the scheme with immediate effect. This policy decision was conveyed in the orders viz., G.O. (Ms) No. 37, Personnel and Administrative Reforms (FR-IV) department, dated 10.03.2020.

14. One can be said to be qualified, not when he completes the course, but only if he passed all the tests / exams in the said course and any benefit can be accrued to a person only when he successfully passed and completed the said course. Therefore, it cannot be the reason for claiming the benefit of sanction of advance increment. Petitioners herein have no locus standi to claim the sanction of advance increment as a matter of right. Moreover, Government though cancelled the earlier scheme of sanction of advance increments, have introduced later, a new scheme of sanction of lumpsum amount based on the Government of India guidelines and it is the fiscal policy decision based on the financial position exist from time to time.

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As such there is no discrimination in recognizing the higher qualification and there is no arbitrariness in the above orders. Further, the date of joining in the higher qualification course is not the criteria, since some may complete the course in time and some may complete it belatedly with arrears because of reasons best known to them only. Therefore, it cannot be the reason for claiming the benefit of sanction of advance increment. The concession cannot be claimed as a matter of right in addition to the clearance to pursue education while in job with full salary.

15. Further, in para 6(vi) of G.O. (Ms) No. 37, Personnel and Administrative Reforms (FR-IV) department, dated 10.03.2020, it has clearly been mentioned as follows:-

"The cases of Government servants who have acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, then



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they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degree acquired."

Certain clarification have been issued in G.O.(Ms) No.116, P&AR (FRIV) Dept., dated 15.10.2020 i.e., the cases of Government Servants who have acquired higher qualification prior to the date of issue of G.O. (Ms) No. 37, P&AR Dept., dated 10.03.2020 and appropriate orders to be issued before 31.03.2021. Based on the orders issued in G.O. (Ms) No.116, P&AR (FRIV) Dept., dated 15.10.2020, the cut off date for granting advance increment who have acquired higher qualification prior to 10.03.2020 has been extended from 10.03.2020 to 31.03.2021. Further, on exemption basis, all the pending claims have been allowed until the orders issued in G.O. (Ms) No. 95, Personnel and Administrative Reforms (FR-IV) Department, dated 26.10.2023.

16. A committee was formed by the Finance department under the Chairmanship of Special Secretary, Finance department to examine the request of the doctors association with reference to review the number of years in which time bound promotion is given to Medical Officers. In this regard, the above said committee has submitted its report. The Government



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have examined the request of doctors association along with the report of the committee. After examination, the Government in Health and Family Welfare department have decided to accept the report of the committee and accordingly ordered to grant special increments to the Medical Officer on acquiring higher qualification with the concurrence of Finance department. The Government have sanctioned special increments to the Medical Officers, to combat illnesses and maintain health and productivity of the citizens. At any point to meet emergencies and to control the diseases, many Specialists are required. It is also to be recalled that in reality in many specialist positions are awaiting qualified Medical Officers and the Government is still in search of Specialist so as to control the deadly diseases, Hence, the writ petitioners cannot be compared with the Medical Officers, especially Specialist Medical Officers in life saving vocation and for this reason Government has sanctioned the special increments to the Medical Officers with latest rare category of skills. The above said special increment and allowances cannot be compared with other Government Servants including Teachers in Tamil Nadu Government.



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17. Further, as a policy measure for welfare of Government

Servants a new policy has been adopted on the analogy of Government of India and orders have been issued in G.O.Ms.No.120, Human Resources Management (FR-IV) Department, dated 01.11.2021, for granting incentive in the form of one-time lumpsum amount to the State Government Employees for having acquired additional qualification after 10.03.2020 as follows:-

<i>Sl.No.</i>	<i>Higher Qualification</i>	<i>Amount</i>
1.	Ph.D	25,000/-
2.	PG Degree or equivalent	20,000/-
3.	Degree/Diploma	10,000/-

18. Further, substantial number of claims are pending from candidates with higher educational qualifications. Hence, to expeditiously process and bring clarity to the scheme of granting incentive, in partial modification of the orders issued in GO (Ms)No. 116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020 and G.O. (Ms)No. 120, Human Resources Management (FR-IV) Department, dated 01.11.2021 and clarifications issued in Letter No.4470/FR-IV/2022-1,



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Human Resources Management (FR-IV) Department, dated 18.02.2022, the cut-off date for sanction of advance increments for having acquired higher educational qualifications ended and the new scheme of sanction of lumpsum amount is ordered to take effect from 10.03.2020. Thus, the clarification issued in G.O. (Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020 and Letter No.4470/FR-IV/2022-1, Human Resources Management (FR-IV) Department, dated 18.02.2022 are harmonized to ensure that, all pending applications as on 10.03.2020 and claims made subsequently for sanction of benefits for having acquired higher educational qualifications shall be disposed as per this new scheme of granting lumpsum incentives only and not the earlier scheme of granting increments in salary. This principle would ensure expeditious disposal of all pending claims, and also maintain parity and equal treatment between the claims pending as on date and for the persons acquiring higher educational qualifications in future also. Even though the Petitioners have acquired their higher educational qualification prior to 10.03.2020 and claims made subsequently for sanction of benefits for having acquired higher educational qualifications, as per the orders issued



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in G.O. (Ms) No. 95, Personnel and Administrative Reforms (FR-IV) Department, dated 26.10.2023, the petitioners are not eligible for sanction of advance increment for acquiring higher qualification since by the orders issued in the above, the lumpsum amount shall be granted only for those who have acquired higher qualification and not sanctioned with advance increment till date.

19. Though, the petitioners were furnished details about their completion of higher educational qualification and mentioned their claim, claiming incentive/advance increment, no proof has been filed by any of the petitioners. Even according to the same, all the petitioners completed their higher educational qualifications between 2003-2010. They made claim only in the year 2018-2019 on which date the G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 was issued and thereby scheme of advance incentive has been cancelled and all orders in this regard have been dispensed with. Therefore, the claim of the petitioners have lapsed once the said Government order come into effect. But, the petitioners did not pursue their claim for the past four years. They



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have come to this Court after guidelines were issued vide G.O.Ms.No.95 dated 26.10.2023 and after the another policy decision as early as in the year 2021 vide G.O.Ms.No.120, Human Resources Management (FR-IV) Department, dated 01.11.2021. Even, after two years from the date of the said Government order, the petitioners have pursued their claim. Therefore, the claims of the petitioners have become stalled and therefore they not entitled for the relief as claimed by them. Further, it is settled proposition of law that a policy decision by a competent authority would not come within the purview of judicial review. The courts should resist itself from embarking upon a venture over decision reached on a consideration of relevant materials. The policy decision can only be challenged on the ground of illegality, as being contrary to law or any constitutional provision. In this case, no such grounds are made out for judicial review. The policy decision can be interfered by the Court only when the decision making process is initiated by the malafidness, unreasonableness or arbitrariness and overwhelming public interest. Here, no such grounds are made out to interfere with the decision making process by the Government. In fact, after analysing the entire relevant materials and facts, policy decision has



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been taken by the first respondent following the decision taken by the Government of India based on the recommendations of the VIIth Central Pay Commission which would not fall under illegality, unreasonable and arbitrariness against public interest or contrary to any incumbent or constitution of India. That apart, as per G.O.Ms.No.95 dated 26.10.2023, a lump-sum payment ordered to pay for higher qualification instead of incentive in the salary for higher qualification.

20. Therefore, this court cannot find any infirmity or illegality in G.O.Ms.No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023. Hence, all the writ petitions are devoid of merits and liable to be dismissed. Accordingly, all the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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G.K.ILANTHIRAIYAN, J.

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These matters are posted today before this Court under the caption 'For Being Mentioned' at the instance of the learned counsels appearing for the petitioners in W.P.Nos.33954, 35047, 36234 & 36242 of 2023.

2. This Court passed common order in the above writ petitions for the reason that all the writ petitions were filed challenging the order passed by the first respondent in G.O.Ms.No.95, Human Resources Management (FR-IV) Department dated 26.10.2023 and the issues involved in all the writ petitions are one and the same.

3. The learned counsels appearing for the petitioners in W.P.Nos.33954, 35047, 36234 & 36242 of 2023 submitted that when this Court passed order in main Writ Petition, subsequently, these writ petitions were added in the batch of writ petitions without hearing the respective counsels.

4. Considering the submission made by the learned counsel



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appearing for the petitioner, this Court is inclined to add their submission and also discussion of this Court as follows :-

“4.1. Mr.N.Subramaniyan, learned counsel appearing for the petitioners in W.P.No.35047 of 2023, submitted that all the petitioners are working as Assistant Executive Engineer except the petitioners 4 & 5 and they are working as Assistant Engineer in the Rural Development and Panchayat Raj Department. They had acquired post graduate degree even before their entering into service. Therefore, they are entitled and eligible for advance increment from the date of their joining into service. The petitioners had joined in the service from the year 2007-211 respectively. However their claims for advance increment were rejected for one and another reasons. In fact, some of the petitioners were granted advance increment and subsequently the said benefits were cancelled and recovered the advance increment which were already paid to the petitioners.

4.2. While being so, the impugned government order has been passed without application of mind and ignoring the settled principles of law. The impugned government order is an executive order. Therefore it



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cannot have retrospective effect affecting the vested right of the petitioners.

In fact, already same benefits were extended to those who have acquired post graduate degree prior to 10.03.2020, as per the government orders in G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 and G.O.Ms.No.116, Personnel and Administrative Reforms (FR-IV) Department dated 15.10.2020. All of sudden stopping the advance increment to those who have acquired higher qualification prior to 10.03.2020 is utter violation of the Constitution of India. Similarly placed Assistant Engineer and Assistant Executive Engineer like the petitioners in the public works department, highways department and rural development department had been granted with two advance increment. Whereas the denial of advance increment to the petitioners is nothing discriminating. Now they were awarded only lump sum incentives instead of advance increment. Therefore, it is clear violative of Article 14 of the Constitution of India and the impugned government order itself void and ab initio of Article 13(2) of the Constitution of India.

4.3. In support of his contention, he relied upon the



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judgment of the Hon'ble Supreme Court of India reported in **2015(2)LLN545(SC)** in the case of **Canara Bank & anr Vs. M.Mahesh Kumar** held that the circular or executive order cannot have retrospective effect so as to take away the right accrued as per the earlier order. He also relied upon judgment reported in **2022 SCC OnLine SC 1280** in the case of **Bharat Sanchar Nigam Ltd., Vs. Tata Communications Ltd.**, in which the Hon'ble Supreme Court of India held as follows:-

“29. It is a settled principle of law that it is the Union Parliament and State Legislatures that have plenary powers of legislation within the fields assigned to them, and subject to certain constitutional and judicially recognized restrictions, they can legislate prospectively as well as retrospectively. Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject. By a retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.

30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence



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cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute.”

4.4. He also relied upon the judgment reported in **(1997) 6 SCC 623** in the case of ***Railway Board Vs. C.R.Rangadhamaiah*** in which the Hon'ble Supreme Court of India held that an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of rights guaranteed under Articles 14 and 16 of the Constitution of India.

4.5. Mr.Nishar Ahamed, the learned counsel appearing for the petitioners in W.P.Nos.33954 of 2023 submitted that the petitioners are working as B.T. Assistant in various schools. Though, they were granted one increment for their post graduate, the second increment was discontinued on acquiring M.Phil/Ph.D to government teachers. The petitioner had acquired their M.Phil decree from the year 2015-2019. As per the cut off date 10.03.2020, they are eligible for advance increment. Further, junior to the



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petitioners who had acquired additional educational qualification were granted incentive increments. No fault on the part of the petitioner and they were denied the advance increment, which is contrary to law. It is also violation of Article 14 of the Constitution of India. When the similarly placed persons that too junior to the petitioners were awarded incentive increment for their additional qualification, denial of the very same to the petitioners is nothing but clear discrimination and it is clear violation of constitution of India.

4.6. Mr.Jothimanian, learned counsel appearing for the petitioners in W.P.Nos.36234 & 36242 of 2023, submitted that the impugned government order is nothing but illegal, unjust, discrimination and against right of the petitioners granted in G.O.Ms.No.37 dated 10.03.2020 as well as the clarification issued in G.O.Ms.No.116 dated 15.10.2020. The delay caused for non granting the incentives increments is not on the part of the petitioners and it is only on the administrative reasons. Therefore, para 7 of the impugned government order is totally unsustainable and against the rights of the petitioners on par with similarly placed persons. Due to Covid-19 pandemic situation, the respondents delayed the sanction of increment as



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per the earlier government order. Therefore, the petitioners were discriminated and denied their right to get incentive increments as per the government scheme.

4.7. In fact, their applications seeking advance increments are pending before the respondents. Hence the applications submitted by the petitioners ought to have been considered and passed order on the previous government order and sanctioned the increments to the petitioners. As per the scheme for granting increments the petitioners were permitted to acquire high qualification as per the government order. They had acquired higher qualification M.Ed., and M.Phil in various subjects with due permission from the respective authorities and acquired higher qualification on or before 10.03.2020. Though they have submitted their claim of advance increments, their claims were not considered so far. Therefore, the impugned government order is clear discrimination to discriminate among the equalities.”

3. The grounds raised by the learned counsel appearing for the petitioners were already answered by this Court. In addition to that the



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following paragraphs are also included :-

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“19.1. It is relevant to extract the government order in G.O.Ms.37

Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020

“6. (vi) The cases of the Government servants who have acquired higher qualification prior to issue to this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of finance department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degree acquired.”

Thus it is clear that if no previous order issued by any of the department concerned then the claimants are not eligible for sanction of any advance increments irrespective of the post held/degree acquired. Therefore, it cannot be said that discrimination among the same employees and it is



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so far. Further, as per the said government order, those who were sanctioned advance increment/not applied for sanction of increments are not eligible for any advance increments for acquiring higher qualification. Subsequently it was also clarified by the government order in G.O.No.116 Personnel and Administrative Reforms (FR-IV) Department dated 15.10.2020. Therefore, the judgments cited by the learned counsel appearing for the petitioners are not applicable to the case on hand.

19.4. Further it is not arbitrary and as such it cannot be interfered by the Court since there is no illegality. As per the government order passed in G.O.Ms.No.120 Personnel and Administrative Reforms (FR-IV) Department, dated 01.11.2021, for granting incentives in the form of one time lump sum for having acquired additional qualification after 10.03.2020. Accordingly, those who had acquired additional qualification are entitled to have only lump sum amount instead of advance increments. Further in order to expeditiously process and bring clarity to the scheme of granting incentive, in partial modification of the earlier Government orders dated 15.10.2023 & 01.11.2021, the cut off date for sanction of advance



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increment for acquiring additional higher qualification ended and new scheme of sanctioning of lump sum is ordered with effect from 10.03.2020.”

4. Insofar as other grounds raised by the respective learned counsel for the petitioners are concerned, they were already answered by this Court. Registry is directed to incorporate the above paragraphs 4.1 to 4.7 and 19.1 to 19.4 in the order dated 29.01.2024 in WP.Nos.1605 of 2024 etc batch., and issue order copy afresh.

07.03.2024

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G.K.ILANTHIRAIYAN,J.
gvn

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1. The Chief Secretary to Government,
State of Tamilnadu,
Human Resources Management (FR.IV) Department,
Fort. St. George,
Chennai-600 009.
2. The Secretary
State of Tamilnadu
Personnel and Administrative Reforms Department,
Fort., St., George,
Chennai-600 009.
3. The Director,
Tamilnadu Government Audit Department,
Directorate No.571, Officers Building,
Veterinary Hospital Campus,
4th Floor, Anna Salai,
Nandanam, Chennai-600 35.
4. The Joint Director (Personnel)
School Education Department,
DPI Complex, College Road,
Chennai.

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29.01.2024