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W.P.No.1363 to 1366 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.Nos.1363 to 1366 of 2015

and

M.P.Nos.2, 2 and 2 of 2015 and 1 of 2015

K.Vasanthi	... Petitioner in W.P.No.1363 of 2015
S.Nisha	... Petitioner in W.P.No.1364 of 2015
R.Sharmila	... Petitioner in W.P.No.1365 of 2015
T.Ezhilarasi	... Petitioner in W.P.No.1366 of 2015

Vs

- 1.The Regional Accounts Officer (Audit)
School Education Department,
Coimbatore.
- 2.The Chief Educational Officer,
Cuddalore District,
Cuddalore. ... Respondents in all writ petitions
- 3.The Head Master,
Government Girls Higher Secondary School,
Cuddalore Port, 607 003,
Cuddalore District. ... Respondent in W.P.No.1363 of 2015
- 3.The Head Master,
Municipal Higher Secondary School,
Cuddalore 607 001,
Cuddalore District. ... Respondent in W.P.No.1364 of 2015
3. The Head Master,
Government Higher Secondary School,
Vandipalayam 607 004,
Cuddalore District. ... Respondent in W.P.No.1365 of 2015
- 3.The Head Master,



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Government Higher Secondary School,
Manjakuppam,
Cuddalore 607 001.

... Respondent in W.P.No.1366 of 2015

Prayer in W.P.No.1363 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent which culminated in the impugned order of the first respondent in Na.Ka. No.2451/ E20/2014 dated 11.08.2014 and quash the same as illegal and consequently direct the respondents to sanction incentives to the petitioner as per G.O.Ms. No.324, Education, Science and Technology Department (E2) dated 25.04.1995.

Prayer in W.P.No.1364 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent which culminated in the impugned order of the first respondent in Na.Ka. No.5819/ E20/2014 dated 13.11.2014 and quash the same as illegal and consequently direct the respondents to sanction incentives to the petitioner as per G.O.Ms. No.324, Education, Science and Technology Department (E2) dated 25.04.1995.

Prayer in W.P.No.1365 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent which culminated in the impugned order of the first respondent in Na.Ka. No.162/ E20/2014 dated 04.01.2014 and the consequential order of the third respondent in Na.Ka.No.154/2014 dated 11.12.2014 and quash the same as illegal and consequently direct the respondents to sanction incentives to the petitioner as per G.O.Ms. No.324, Education, Science and Technology Department (E2) dated 25.04.1995.

Prayer in W.P.No.1366 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent which culminated in the impugned order of the first respondent in Na.Ka. No.346/2014 dated 12.09.2014 and quash the same as illegal and consequently direct the respondents to sanction incentives to the petitioner as per G.O.Ms. No.324, Education, Science and Technology Department (E2) dated 25.04.1995.

For Petitioner : M/S.Devaraj Mahesh for
in all petitions M/S.N.Suresh



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For Respondents : Mrs.P.Rajarajeshwarai,
in all petitions Government Advocate.

COMMON ORDER

Since the issues raised in all these writ petitions are similar, they are heard together and disposed of by way of this Common Order.

2. The writ petitioners have completed B.P.E.S., M.P.E.S., and M.Phil., in Physical Education in the following years, as noted in the chart below:

S.No.	Name and Case No.	Bachelor of Physical Education & Sports (BPES) completed	Master of Physical Education & Sports (MPES) completed	M.Phil in Physical Education completed	Incentive Increment granted for Period	Amount (in Rs.)
1.	Vasanthi (W.P.No.1363 of 2015)	1994	1996	2008	2008-2014	63,140.00
2.	Nisha (W.P.No.1364 of 2015)	1998	2000	2002	2007-2014	73,331.00
3.	Sharmila (W.P.No.1365 of 2015)	1994	1996	2008	2008-2014	1,18,941.00
4.	Ezhilarasi (W.P.No.1366 of 2015)	1994	1996	2008	2008-2014	63,140.00

3. The petitioners have been appointed as Physical Education Teachers in the third respondent School in each of these writ petitions. Earlier, the



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Government had introduced a scheme for granting incentives to teachers, who acquired higher qualifications beyond the minimum required qualifications, as per G.O.(Ms.)No.42 Education Department dated 10.01.1969 to encourage the teachers for acquiring higher qualifications which would ultimately benefit the students. Later by G.O. Ms.907, Personal & Administrative Reforms, dated 17.09.1986, based on the recommendations of fourth pay commission, restrictions were imposed that the incentive increments should be with reference to the area of specialization, instead of any subject. However later based on the representations of the Associations, G.O.(Ms.)No.624, Education, dated 13.07.1992 was issued, relaxing and prescribing 4 conditions for grant of incentive increments. As per Clause (iv) of the G.O., in future physical education teachers incentive increments will only be in the area of physical education and the Director of School Education will identify the relevant courses.

4. While so, the Government issued G.O.(Ms.)No.324 Education, Science and Technology Department (E2) dated 25.04.1995, cancelling the conditions in clause (i) to (iii) in GO.(Ms.)No.624 dated 13.07.1992 and further as per clause (iii) of this G.O. it stipulated that in respect of the teachers in physical education they are eligible for the incentive increments to higher qualification only in physical education. Therefore the benefit of incentive increments to Physical



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Education Teachers was extended only for acquiring higher qualifications in physical education.

5. The minimum required qualification for the post of Physical Education Teacher is a degree in B.P.E.S. Since the petitioners have acquired two higher qualifications namely M.P.E.S. and M.Phil in Physical Education, they are entitled to receive two incentive increments in accordance with G.O.(Ms.)No.324 dated 25.04.1995. As such the petitioners had submitted requests for the sanctioning and awarding of these two incentive increments and the third respondent, through proceedings dated 10.09.2013, 29.08.2013, 11.06.2013, and 06.08.2013, had sanctioned the two incentive increments with effect from 2007 and 2008, respectively, which corresponds to their dates of joining the post. Consequently, the petitioners have been receiving these two additional incentive increments.

6. However, the first respondent had issued the audit reports dated 11.08.2014, 13.11.2014, 04.01.2014 and 11.08.2014, objecting to the two incentive increments awarded to the petitioners on the grounds that they are not entitled to receive incentive increments prior to the date of the Government Order and that they would only be eligible for benefits from the date of the Government



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Order. Assailing the impugned proceedings, the petitioners have filed the above writ petitions.

7. The learned counsel for the petitioners would contend that the petitioners are entitled to the award of incentive increment based on G.O.(Ms.)No.324 Education, Science and Technology Department (E2) dated 25.04.1995, particularly in view of Clause 5 (iii). Admittedly, the petitioners are all having higher qualifications of M.P.E.S. and M.Phil in Physical Education. Hence, the impugned orders of the first respondent seeking to recover the benefits of the incentive increments paid from 2007 to 2014, cannot be sustained. He would further submit that prior to issuance of the impugned proceedings, no notice was issued to the petitioners and they were not afforded any opportunity of hearing prior to passing of the impugned orders. Therefore, the impugned orders are in violation of the principles of natural justice, he contended and seeks for indulgence of this Court.

8. The learned Government Advocate appearing for the respondents would submit that the incentive increments were applicable only in respect of degrees obtained in Physical Education and by relying on G.O.(Ms.)No.177 School Education Department dated 13.10.2016 would submit that earlier incentive



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increments were granted only for the M.P.Ed degree and only pursuant to this Government Order, incentive increments were extended to M.Phil. or Ph.D. Degree. Further, by relying on Clause 7(iii) of the Government Order, the learned Government Advocate would contend that even such benefits would only be available from the date of issuance of the Government Order. In view of the same the audit objections raised are completely justified, she contended and sought for dismissal of the writ petition.

9. Heard both sides and perused the material available on record.

10. The petitioners are all admittedly having B.P.E.S degree, which is a required qualification for appointment to the post of Physical Education Teacher. They have all been appointed as Physical Education Teachers in the third respondent school in each of these writ petitions. Even at the time of their appointment, three of the petitioners had already acquired the higher qualification of M.Phil., in Physical Education, in the year 2008 and one petitioner in the year 2002. Since the petitioners have acquired the higher qualifications of M.P.E.S and M.Phil in Physical Education, they are all entitled to the award of incentive increments.



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11. In this regard, Government had earlier issued G.O.(Ms.)No.42 Education Department dated 10.01.1969, which introduced a scheme for sanctioning increments to teachers who possessed higher qualifications beyond the minimum required qualification, to encourage teachers to acquire higher qualifications which would ultimately benefit the students. As per the scheme a teacher is entitled for grant of one incentive for acquiring higher qualification in any degree and at the maximum is entitled for 2 incentives for acquiring higher qualifications in their career.

12. Even though initially incentives were granted for acquiring higher qualification in any subjects but later some restrictions were brought in G.O.(Ms.)No.907, Personal and Administrative Reforms, dated 17.09.1986, stipulating incentives only with reference to area of specialization instead of any subject. However based on representations of the Associations, the restrictions were relaxed in G.O.(Ms.)No.624, Education dated 13.07.1992 by introducing 4 conditions in clause (i) to (iv). Clause (iv) of the G.O. reads as follows,

‘iv). In future physical education teachers incentive increments will be only in the area of physical education and the Director of School Education will identify the relevant courses.’



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13. However later GO.(Ms.)No.324, Education, Science and Technology Department (E2) dated 25.04.1995 was issued by deleting the clause (i) to (iii) alone in G.O.No.624 dated 13.07.1992 and issued further directions. As per clause (iii) of the G.O., the incentive increments is to be awarded to Teachers in Physical Education only for higher qualifications in Physical Education subject. The relevant portion of the G.O.(Ms.)No.324 reads as follows,

“5. The Government according direct that

(i) the conditions (i) to (iii) in para 3 of G.O.Ms. No.624, Education dated 13.07.1992 be deleted.

(ii) For the sanction of incentive increment the subjects in the Higher Secondary Syllabus shall be the relevant subjects.

(iii) In respect of the teachers in Physical Education, they are eligible for the incentive to higher qualification only in Physical Education.

(iv) These orders will take retrospective effect from 17.09.1986 to cover past cases,

(v) The teachers who have acquired higher qualification in subjects other than higher Secondary Syllabus shall not be eligible for any incentive increment.”

14. In the instant cases, the petitioners have filed the Degree Certificates in the typed set of papers and they have acquired higher qualifications as per the details furnished in the table above. It is undisputed that all the petitioners, in



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addition to the minimum educational requirement of the B.P.E.S. degree, have acquired the additional qualifications of M.P.E.S. and M.Phil. in Physical Education. In view of Clause 5 (iii) of G.O.(Ms.)No.324 Education, Science and Technology Department (E2) dated 25.04.1995 which provides eligibility for Physical Education Teachers to receive incentive increments for higher qualifications in Physical Education, the third respondent by order passed in the year 2013, has awarded two incentive increments to the petitioners with effect from the years 2007 and 2008, respectively. The benefits has been extended, either from the date of acquiring the higher qualifications or from the date of joining the posts with higher qualifications.

15. The main submission of the respondent counsel is that in light of G.O.(Ms.)No.177 School Education Department dated 13.10.2016, the second incentive increment is eligible only from the date of issuance of the said Government order. When the petitioners have acquired M.P.E.S. degree course even in the year 1996 and 2000 respectively, there is no dispute in the petitioners eligibility for first incentive increment. Further there is also no dispute about the eligibility of the petitioners for second incentive, but however it is only disputed that the petitioners are entitled only from 2016, ie. the date of G.O.No.177 and not from 2007/2008. In fact the impugned order has not been passed relying on



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the G.O.No.177 dated 13.10.2016 as the same was issued only after the impugned order. It is only an improvement made in the counter, which is clearly not permissible and the impugned order must stand on its own strength. Therefore the very submission of the respondent by placing reliance of this GO is baseless and misconceived.

16. Be that as it may, G.O.(Ms.)No.177 School Education Department dated 13.10.2016 merely confirms the eligibility for second incentive increments for M.Phil. or Ph.D., holders in respect of Physical Education Teachers from the date of issuance of the order. Clause 7(i) 1(b) of G.O.(Ms.)No.177 dated 13.10.2016, reads as follows,

(1)	(2)	(3)	(4)
1(b)	உடற்கல்வி ஆசிரியர் (இடைநிலை ஆசிரியர் பணிநிலை)	B.PEd., (or) BPES (or) BMS	1. M.PEd (or) MPES (or) PG Diploma in Yoga by Recognised University (அ) அதற்கு இணையானது இவற்றில் ஒரு கல்வி தகுதிக்கு முதலாவது ஊக்க ஊதிய உயர்வு. 2. M.Phil (or) Ph.D கல்வித் தகுதிக்கு இரண்டாவது ஊக்க ஊதிய உயர்வு.

17. On perusal of G.O.(Ms.)No.177, it is evident that as per clause 7(i)1(b) all M.Phil or Ph.D degrees are eligible for the second incentive increments. However, as per G.O.(Ms.)No.324 Education, Science and Technology



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Department (E2) dated 25.04.1995, it explicitly states in clause 5(iii) that Physical Education Teachers are eligible for incentive increments only for higher qualifications in Physical Education. Further the G.O. does not limit the benefits to one incentive or to any specific higher degrees, except specialisation in physical education. Therefore, as per G.O.(Ms.)No.324, additional increments would be granted to Physical Education Teachers only for acquiring higher qualifications in the subject of Physical Education. To the contrary, as per G.O.(Ms.)No.177 School Education Department dated 13.10.2016, the second incentive increment is eligible for all M.Phil or Ph.D holders in any field, as the restriction in physical education has not been included.

18. As such it could be seen that when as per G.O.No.324 dated 25.04.1995, the physical education teachers were entitled to the incentives for acquiring higher qualification only in physical education subject, after issuance of G.O.No.177 dated 13.10.2016, the physical education teachers are entitled for second incentive from the date of the order even if completed M.Phil or Ph.D in any specialisation as in the cases of other teachers. Therefore the objection that the petitioners are entitled for the second incentive increment only from the date of G.O.No.177 cannot be sustained, as they are already entitled as per G.O. No.324.



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19. Further as referred earlier the impugned order only states that the petitioner are entitled for incentive from the date of G.O. and as on that date G.O. No.177 was not even issued. Therefore at the best, it could only refer to G.O.No.324 dated 25.04.1995 based on which the petitioners are entitled for the incentives which has been rightly granted. Further the recovery is sought to be made based on the audit objection with out issuing any notice to the petitioners and affording them an opportunity of hearing, which is in clear violation of principles of natural justice. Further when the benefits have been granted by the respondents based on their own calculations and not due to the mistake on the part of the petitioners, the impugned order in seeking to recover the benefits granted cannot be sustained.

20. As far as the petitioners are concerned, having acquired two higher qualifications as mentioned in the chart above and admittedly since they possess an M.Phil. Degree in Physical Education, they are covered under G.O.(Ms.)No.324 of the Education, Science and Technology Department (E2) dated 25.04.1995 and are eligible for two incentive increments. It was only based on this G.O., the benefit of incentive increments have been extended to the petitioners by the order of the third respondent in the year 2013.



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21. Therefore, the impugned orders, which raised audit objections for the recovery of incentive increments for the period from 2007/2008 to 2014, cannot be sustained and accordingly, the impugned orders are quashed.

22. In light of the above deliberations, these writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

25.10.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
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G.ARUL MURUGAN, J.
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To
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School Education Department,
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