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W.P.No.1406



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.14066 of 2015

and

M.P.No.2 of 2015

V.Ushar

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George, Secretariat, Chennai – 600 009.
2. The Director of Public Health and Preventive Medicine,
No.359, Anna Salai, Chennai – 600 006.
3. The Deputy Director of Health Services,
Old G.H Compound, Thiruvavarur – 610 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the order passed by the 1st respondent in G.O (Ms) No.154/P&AR/FR-IV Department, dated 26.10.2010 and the subsequent orders passed by the 2nd respondent in R.No.73044/E1/S2/2015 dated 04.03.2015, 3rd respondent in O.Mu.No.4009/A1/2014 dated 11.07.2014 and to quash the same and consequently direct the respondents 1 to 3 to sanction two advance increment for acquiring MBA



Degree in favour of the petitioner with effect from December, 2013 within a time frame to be fixed by this Hon'ble Court.

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For Petitioner : Mr.G.Sankaran, Senior Counsel for
Mr.S.Nedunchezhiyan,

For Respondents : Mr.K.Tippu Sultan,
Additional Government Pleader

ORDER

The petitioner herein was initially appointed as 'Junior Assistant' in the Public Health Department in the year 1985 and thereafter, promoted from time to time and finally promoted to the post of 'Administrative Officer' with effect from 31.03.2010. It was at that stage, the petitioner obtained permission from the respondent/ Department to study MBA course by submitting an application on 27.10.2010 and after obtaining permission, the petitioner joined the MBA course and completed the said course in the month of December, 2013. It is thereafter, the petitioner made a claim for grant of advance increments in terms of G.O (Ms) No.1159, P&AR/FR-11 Department, dated 21.11.1994, for having acquired the Post Graduate qualification viz., MBA Degree. The said claim of the petitioner was negated by the respondents by passing the impugned order dated 04.03.2015 and 11.07.2014, contending that benefit of the advance increments that were provided under G.O (Ms) No.1159 dated 21.11.1994 was withdrawn by issuing G.O (Ms) No.154/P&AR/FR-IV Department, dated 26.10.2010 and therefore, the request of the petitioner cannot be complied



with. Under those circumstances, the petitioner while questioning the G.O (Ms) No.154 dated 26.10.2010, also questioned the impugned proceedings dated 04.03.2015 and 11.07.2014 issued by the Respondents 2 and 3 respectively by filing the present Writ Petition.

2. Mr.G.Sankaran, learned Senior Counsel appearing for the petitioner strenuously contended that the petitioner, with a view to avail the benefit of advance increments provided under G.O (Ms) No.1159 dated 21.11.1994, sought permission from the respondent/ Department on 20.09.2010 i.e., prior to issuance of impugned G.O (Ms) No.154 dated 26.10.2010 and completed the said course by December, 2013 and therefore, the impugned Government Order cannot have effect of taking away the right of the petitioner to claim the advance increment. He also further contended that the reasons that are assigned in the impugned G.O (Ms) No.154 dated 26.10.2010 are totally unsustainable and they are not germane and they have nothing to do with the object for which advance increments provided by the Government by issuing G.O (Ms) No.1159 dated 21.11.1994.

3. On the other hand, Mr.K.Tippu Sultan, learned Additional Government appearing for the respondents contended that, providing advance increments for



acquiring additional degree or Post Graduate degree is a concession that is extended by the State, but not a service condition and hence, it is open for the respondent State to withdraw the said concession at any point of time and the said withdrawal does not give any cause of action to the petitioner to make a grievance out of it and therefore, there are no merits in the Writ Petition.

4. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

5. By now, it is well settled that providing for advance increments for acquiring additional qualification is not a service condition, but only a concession that is extended at the discretion of the State. Once it is well settled that the same is a concession, it is always open for the State to withdraw the same at any point of time or extend the same to the employees. No doubt, the reasons that are assigned in the G.O (Ms) No.154 dated 26.10.2010 does not appear to be germane, but on that ground itself, this Court cannot interfere with the said Government Order, as it is always at the discretion of the State to extend the concession to its employees or not. In the absence of any violation of any fundamental or legal right of the petitioner, this Court is not inclined to grant any relief under Article 226 of the Constitution of India.



6. Be that as it may, as on the date of issuance G.O (Ms) No.154 dated 26.10.2010, admittedly the petitioner did not possess MBA Degree to claim for grant of advance increments. It is only almost three years after the impugned Government Order came to be issued, the petitioner has completed the MBA course. May be the petitioner has legitimate expectation of securing advance increments on completion of her MBA course and accordingly obtain prior permission and completed the course in the year 2013. But on mere legitimate expectation, the impugned Government Order cannot be quashed, so long as the said order is issued by a competent authority and the same is in accordance with law, especially in the context of conclusion that is arrived at by this Court that there is no right conferred upon the petitioner to claim for advance increments in the absence of a Government Order. As the petitioner admittedly has not acquired the MBA degree during the subsistence of the scheme providing for advance increments, the petitioner cannot be said to be having legitimate expectation to claim for such advance increments for having acquired the Post Graduate degree. Merely because the petitioner has obtained prior permission from the respondent/ Department to pursue MBA course, the same by itself does not confer any right on the petitioner nor create any obligation on the



respondent/ Department to grant of increments in terms of the scheme that was existing at the relevant point of time when permission was granted to the petitioner.

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7. In the circumstances, this Court does not see any reason to interfere with the orders passed by the respondent/ Government. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Connected Miscellaneous Petitions, if any shall stand closed.

04.09.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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