



W.P.No.1946 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.No.1946 of 2023
and
WMP Nos.2027 & 2028 of 2023

S.Santhanakumar

... Petitioner

-Vs-

- 1.The Chief Educational Officer
Thiruppur District
Thiruppur.
- 2.The District Educational Officer
Thiruppur District
Thiruppur.
- 3.The Regional Accountants Officer
(Audit)
School Education Department
Coimbatore District
Coimbatore 641 001.
- 4.The Correspondent
SLNM Higher Secondary School
Karadivavi
Thiruppur 641 658.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the proceedings of the 3rd respondent made in Na.a.No.396/E5/2018 dated 16.5.2018 and quash the same.



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For Petitioner : Mr.D.Vaidya Shankar
for Mr.Adithya Reddy

For Respondents : Mrs.S.Mythraye Chandru
Special Government Pleader
for R1 to R3

No appearance for R4

ORDER

This writ petition has been filed challenging the impugned proceedings of the 3rd respondent dated 16.05.2018, wherein the 3rd respondent has taken steps for the recovery of the amount paid towards incentive increment for the period from 2011-2016.

2.The case of the petitioner is that he completed his degree in Physical Education in the year 2004 and completed his post graduation in the year 2006. The petitioner also studied M.Phil., in Physical Education and completed the course in the year 2008. The petitioner was appointed as an Physical Education Director, in the aided post at 4th respondent School in the year 2011.

3.The petitioner was granted first incentive increment with effect from 15.02.2011. The second incentive increment was also given on 13.10.2016.

4.The petitioner came to know that the 3rd respondent through proceedings dated 16.06.2018, had initiated steps for recovering incentive increment paid to the



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petitioner for the period from 2011-2016. This came to light only in the year 2022 when such information was given by the 4th respondent School. The same has been put to challenge in the present writ petition.

5.The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

9.It is submitted that the Special Rules for Higher Secondary Educational Service was issued vide G.O.Ms.No.720 Education Department dated 28.04.1981 fixed the minimum educational qualification for the Post of Physical Education Directors and Physical Directresses in Higher Secondary school is M.PEd Degree of university in the state or a degree of a equivalent standard or a Diploma equivalent to M.PEd Degree. Hence the petitioner was appointed in the 4th respondent school as a Physical Director Grade 1 on 15.02.2011.

10.It is submitted that at the time of Appointment itself the petitioner was qualified M.Phil Degree, along with basic qualification M.Ped, there was no orders issued by the Government for sanctioning of incentive increment for M.Phil that the M.Phil qualification is a Higher qualification for Physical Director Grade 1, but the 4th respondent wrongly sanctioned the advance increment for M.Phil qualification in the 2013 and the same was erroneously admitted by the District Educational Officer Tiruppur vide K.Dis No.2069/B2/2013 Dated 03.05.2013.

11.It is submitted that Honourable High Court of Madras order dated 25.04.2016 in W.P.No.15089 of 2016 filed by the



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varioous Physical Education Teachers and Directors, the Government of Tamilnadu issued G.O.Ms.No.177 School Education Department Dated 13.10.2016 for various categories of Physical Education teachers and Directors, mentioned higher qualifications which is eligible for incentive icrements. In that, it is clearly confirmed that the Physical Education Directors Grade-I appointed with M.PEd or MPES are eligible for incentive increments for two incentive increments possessing M.Phil or Ph.D in Physical Education or Diploma in Yoga by recognised university i.e., equal to four normal increments and the above Government order issued only on 13.10.2016.

12.It is submitted that based on G.O.Ms.No.177 School Education Department Dated 13.10.2016, the petitioner is eligible for M.Phil Degree and Diploma in Yoga possessed before appointment and two incentive increments may be sanctioned from 13.10.2016 only. But the 4th respondent wrongly sanctioned one increment for M.Phil from 15.02.2011 and the same was erroneously admitted by the Dist Educational officer. Hence the audit department has risen an objection for the sanction of M.Phil incentive increment from 15.02.2011 instead from 13.10.2016 and the excess amount paid to the petitioner from 15.02.2011 to 12.10.2016 may be recovered. Based on the objection raised by the audit department of school Education, the 4th respondent issued proceedings to the petitioner to repay the excess amount to Government.



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6.Heard Mr.D.Vaidya Shankar, learned counsel for the petitioner and Mrs.S.Mythraye Chandru, learned Special Government Pleader for R1 to R3. There is no appearance for R4 either in person or through counsel.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.The short issue that arises for consideration is as to whether the incentive increment paid to the petitioner for the period from 2011-2016 is liable to be recovered.

9.The stand that has been taken by the respondents is that the petitioner was entitled for the first incentive increment under G.O.Ms.No.177 dated 13.10.2016 only from the year 2016. Whereas it has been wrongly sanctioned from the year 2011 onwards which was attempted to be recovered.

10.The very same issue came to be considered by this Court in WP(MD).No.1771 of 2021 and by order dated 10.01.2024, this stand was rejected in the following manner:

8. The issue in this case is no more res integra. It is needless to say that the petitioner has acquired M.Phil in Physical Education itself and hence, there is no doubt he is entitled for incentive



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increment for the said qualification. However, the hyper technical argument of the Government Advocate that the qualification to which the teachers would be entitled for incentive increment was fixed only vide G.O.Ms.No.177, dated 13.10.2016 and all the other previous Government Orders in G.O.Ms.No.324, dated 25.04.1995 and G.O.Ms.No.624, dated 13.07.1992 did not mandate anything as to the qualification which were entitled for incentive increment. Those two Government Orders just indicated as to the entitlement of the Physical Education Teachers for incentive increment in case of acquiring higher qualification in the same stream and however, the qualification was not mentioned. It was only in G.O.Ms.No.177, the qualification of M.Phil has been specifically mentioned and that too a cut off date has also been mentioned for grant of incentive increment. Such argument is not sustainable in view of the order passed by this Court in various cases which were relied upon by the learned counsel for the petitioner. To mention specifically, in W.P(MD)No.290 of 2018 even verification of G.O.Ms.No.177 in this aspect has been clearly referred to vide order, dated 12.02.2018. The relevant portion of which is extracted as follow:

“3.In the present case, it is not in dispute that the petitioner herein acquired higher qualification only in physical education. Considering these aspects, the petitioner was granted an incentive increment.

4.The same is now sought to be reviewed in view of the audit objection. The audit objection is to the effect that in view of the issuance of G.O.Ms.No.177 School Education Department dated 13.10.2016, the petitioner can be granted incentive increment only from the date of issuance of G.O.Ms.No.177. Therefore, the incentive



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earlier granted is sought to be recalled. The petitioner has been directed to remit the arrears of such increment amounts already received by him.

5.The learned counsel appearing for the petitioner contended that the writ petitioner was rightly granted incentive increment earlier and that therefore the order directing recovery as well as re-fixation of his pay will have to be quashed.

6.Per contra, the learned Special Government Pleader appearing for the respondents contended that there is a distinction between the Physical Education Teacher and Physical Director and that only the Physical Education Teachers could have been granted incentive increment for acquiring higher qualification and the petitioner being a Physical Director was not eligible to be conferred with such a incentive increment.

7.This Court is of the view that the distinction sought to be made between the Physical Education Teacher and Physical Director would not help to resolve the issue on hand. The question that is to be posed is whether the petitioner can be considered as a Post Graduate Teacher or not. A mere look at the order dated 22.01.2007 regularizing the services of the petitioner would show that the petitioner was appointed as Post Graduate Teacher. For Post Graduate Teachers acquiring higher qualification incentive increment were allowed.

8.The issue on hand is covered by more than one decision of this Court. The learned counsel for the petitioner placed reliance on the order dated 17.10.2014 rendered in WP(MD)No.17025 of 2014 and the order dated 28.06.2017 in WP(MD)No.7092 of 2016. In the typed set of papers, the learned counsel for the petitioner had



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enclosed an order dated 12.06.2009 made in WP(MD)No.1890 of 2009. The direction given by this Court was duly implemented by the department by issuing appropriate Government orders. It is not in dispute that the cases relied on by the petitioner's counsel govern the case on hand also. Therefore, the petitioner being a Post Graduate Teacher was certainly entitled to such incentive increment. That he was appointed as a Physical Director from the very beginning is not of any relevance. What matters is whether he is holding the Post Graduate Teacher post or not. Once it is seen that he is a Post Graduate Teacher, the irresistible inference is that the impugned order has to go. Therefore, the order impugned in the writ petition is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

9. Fully in consonance with the said order passed by this Court, this Court hereby quash the impugned order, dated 17.11.2018. It is also brought to the notice of the Court by the learned counsel for the petitioner that at the time of retirement of the petitioner on 30.09.2022, he was compelled to pay the audit objection amount for the purpose of availing his pensionary benefits and the said amount has already been paid by the petitioner. In view of quashing of the impugned order, dated 17.11.2018 by this Court in this case, the 1st respondent is directed to refund the same.

11.This Court has consistently held that G.O.Ms.No.177 specifically mentioned a qualification and a cut-off date for grant of incentive increment. However, the earlier Government Orders in G.O.Ms.No.324 dated 25.4.1995 and G.O.Ms.No.624 dated 13.07.1992 did not mandate anything in terms of qualification. These



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Government Orders indicated the entitlement of the physical education teachers for incentive increment in case of acquiring higher qualification in the same stream.

12.The above judgment will squarely apply to the facts of the present case. Admittedly, the petitioner had acquired higher qualification viz., M.Phil in physical education. That by itself is sufficient to grant incentive increment. Therefore, the stand taken by the respondents as if, the petitioner will be entitled for incentive increment only from the year 2016 by virtue of G.O.Ms.No.177, is not sustainable.

13.In the light of the above discussion, the impugned proceedings of the 3rd respondent in Na.Ka.No.396/E5/2018, dated 16.5.2018, is hereby set aside. In the result, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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KP
Internet: Yes
Index: Yes/No



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N.ANAND VENKATESH. J.,

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To

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