



WEB COPY



W.P.No.2744 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.2744 of 2021

and

WMP.No.3082 of 2021

H.Bharathi Prathipa

...

Petitioner

Vs.

1. The Chief Educational Officer,
Ooty, The Nilgiris District.
2. The District Educational Officer,
Coonoor, The Nilgiris District.
3. The Block Educational Officer,
Range-1, Coonoor,
The Nilgiris District.
4. The Correspondent,
C.S.I. Primary School,
Kodamalai Estate, Coonoor,
The Nilgiris District.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFIED MANDAMUS to call for the records relating to the impugned order issued by the 2 Respondent in o.mu. No.3343/aa5/2020, dated



W.P.No.2744 of 2021

18. 12 2020, quash same and directing the Respondents to sanction incentive increment to the petitioner from 27.06.2018 onwards for the petitioner higher qualification of B.Lit., and B.Ed, degree as per the G.O.Ms. No 42, Education, dated 10.01.69 and give all consequential benefits and within a time to be stipulated by this Court.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader for RR1 & 2
: Mr.T.Chezhiyan,
Additional Government Pleader for R3

ORDER

Heard, Mr.P.Ganesan, learned counsel for the petitioner and Mr.P.Gurunathan, learned Additional Government Pleader for the respondents 1 & 2 and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondent 3 and perused the materials available on record.

2. The simple case of the petitioner is that she has got an appointment as Secondary Grade Assistant on 10.01.2012. The learned counsel for the petitioner submitted that the basic qualification for the above post is diploma in teacher training. After the petitioner joined service she acquired B.Ed Degree for which she has applied for the special increment. But the same was not granted by the 2nd respondent. Hence this writ petition has been filed for seeking CERTIORARIFIED MANDAMUS to call for the records relating to the impugned



W.P.No.2744 of 2021

order issued by the 2 Respondent in o.mu. No.3343/aa5/2020, dated 18. 12 2020, to quash the same and directing the Respondents to sanction the incentive increment to the petitioner from 27.06.2018 onwards for the petitioner's higher qualification of B.Lit., and B.Ed, degree as per the G.O.Ms. No 42, Education, dated 10.01.69 and give all consequential benefits within a time to be stipulated by this Court.

4.In the impugned order dated 18.12.2020, it is stated that the petitioner's appointment has been approved on 27.06.2018 with retrospective effect from the date of her appointment. The petitioner had completed her course in the academic year 2013-15.

5. The reason for non suiting the petitioner to get the incentive increment is that she had completed the course at the time when her appointment was pending for consideration with the government for granting approval and further, she has not obtained any prior permission to join the course.

6. So far as, the prior permission is concerned, it is worthwhile to refer the earlier judgement of the Madurai Bench of this Court in W.A.(MD) No.14085 of 2015, dated 26.11.2020, the relevant portion is extracted herein:

“12.In the judgment reported in (2015) 6 MLJ 315, Director of



Elementary Education, Chennai, vs. G.Vijayalakshmi and another, relied on by the petitioner, the Division Bench of this Court held as follows:~

--35. *Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non-teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24-A of the Tamil Nadu Government Servants' conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non-teaching staff, working in recognised schools. No doubt, by addition or deletion or substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure-II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamil Nadu Government Servants Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also has the powers to grant leave to any staff.*

36. *As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non-teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a -No objection certificate- from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.*



WEB COPY

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in sor far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.

38. Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

39. Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure-II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of reptition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973.--

13.The above judgment is squarely applicable to the present facts and circumstances of the case. Merely because the petitioner has not obtained prior permission from the Director of School Education for joining the correspondence course, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner



is entitled to incentive increment.”

WEB COPY

7. Since the position of law on the point of obtaining prior permission has already been settled, the incentive increment cannot be obtained for the above reason. So far as the period during which the petitioner had studied the said course, the only contention of the respondent is that the appointment of the petitioner itself was pending with the government for approval.

8. The fact remains that the approval has been granted with effect from the date of her appointment and hence it is immaterial to point out the above period as a reason for withholding the incentive increment for higher qualification. Since the impugned order issued by the 2 Respondent in o.mu. No.3343/aa5/2020, dated 18. 12 2020 has got unnecessary clarification and the matter is kept pending without disposal the same is liable to be set aside.

9. In the result, this Writ Petition is **allowed** and impugned order issued by the 2 Respondent in o.mu. No.3343/aa5/2020, dated 18. 12 2020 is set aside. The respondents are directed to sanction incentive benefit to the petitioner for having acquired higher qualification of B.Lit., and B.Ed, degree as per the G.O.Ms. No 42, Education, dated 10.01.69. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.



WEB COPY



W.P.No.2744 of 2021

Consequently, connected miscellaneous petition is closed.

13.02.2024

Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs

To

1. The Chief Educational Officer,
Ooty, The Nilgiris District.
2. The District Educational Officer,
Coonoor, The Nilgiris District.
3. The Block Educational Officer,
Range-1, Coonoor,
The Nilgiris District.
4. The Correspondent,
C.S.I. Primary School,
Kodamalai Estate, Coonoor,
The Nilgiris District.

J.

R.N.MANJULA,

7/8



WEB COPY



W.P.No.2744 of 2021

jrs

W.P No.2744 of 2021

13.02.2024