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W.P.No.9534 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.9534 of 2021
and W.M.P.Nos.10129 & 10130 of 2021

M.Premalatha

... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.

2.The Director of Elementary Education,
College Road, Chennai – 600 006.

3.The District Educational Officer,
Tirupur – 641 604.

4.The Block Educational Officer,
Tirupur South,
Tirupur District – 628 905.

... 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 proceedings issued by the 4th respondent Block Educational Officer in Oo.Mu.2157/A1/2019 dated 19.03.2020 and quash the same and further direct the respondents herein to sanction and award forth with two incentive increments to the petitioner for acquiring an



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additional higher qualification viz., B.Ed., Degree and pass such further other order.

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For Petitioner : Ms.H.Mary Sowmi Rexi
for M/s.ISAAC chambers

For Respondents : Mr.K.H.Ravikumar
Government Advocate

ORDER

The petitioner herein was initially appointed as a Secondary Grade teacher in Panchayat Union Primary School, Vadugapalayam, Avinasi Union, Tirupur District on 07.10.1996 and thereafter, the petitioner had completed B.lit Degree through Distance Mode and subsequently, she was promoted to the post of Head Mistress of Elementary School from the post of Secondary Grade teacher on 27.01.2006. Thereafter, the petitioner was further promoted to the post of Head Mistress of a Middle School on 07.11.2007 which is a promotional post from the post of Elementary School Headmistress or B.T.Assistant of a Middle School. In terms of Tamil Nadu Elementary Education Subordinate Service Rules,. the qualification for the post of Middle School Headmistress is any degree which is a subject in Higher Secondary course of Tamil Nadu along with B.Ed. Degree. But, in respect of Tamil, special exemption was granted



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from possessing a B.Ed Degree because Tamil is the mother-tongue in the State of Tamil Nadu and the same does not require the methodology of teaching mother-tongue and that B.Lit. in Tamil also was directed to be considered as a qualification to the post of Middle School Headmistress. In view of the same, the case of the petitioner was considered for promotion to the post of Headmistress of Middle School, though the petitioner does not possess B.Ed Degree, which is one of the qualification prescribed for the said post. However, the petitioner after she was promoted to the post of Middle School Headmistress, acquired B.Ed Degree and thereafter, made a claim for grant of incentive increments in terms of G.O.Ms.No.42, Education Department dated 10.01.1969. The said claim of the petitioner was negated by the respondents through the impugned order on the ground that, in order to claim of incentive increment in terms of G.O.Ms.42 dated 10.01.1969 one must possess the higher qualification, and no incentive increment can be granted basing upon the B.Ed degree. Aggrieved by the said proceedings dated 19.03.2020, the petitioner had approached this Court by filing the present Writ Petition.

2. The learned counsel for the petitioner contended that in terms of clarification issued by the second respondent Director dated 07.06.1991 in



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proceedings No.Oo.Mu.No.15623/B19/1990, dated 07.06.1991, the petitioner was promoted to the post of Middle School Headmistress with a qualification of graduation with B.Lit (Tamil) and the petitioner has acquired the B.Ed degree after she was promoted to the post of Middle School Headmistress. Therefore, the petitioner is entitled for award for incentive increments in terms of G.O.Ms.No.42 dated 10.01.1969.

3. The learned counsel for the petitioner also placed reliance on various decisions of this Court in W.P.(MD).No.21368 of 2014 dated 05.04.2017, W.P.(MD).No.1561 of 2017 dated 28.10.2021 and W.P.(MD).No.16574 of 2019 dated 04.12.2019 by the learned Single Judges of this Court and also the Division Bench decisions in W.A.(MD).No.425 of 2017 dated 25.04.2017 and W.A.(MD).No.1429 of 2022 dated 24.04.2024.

4. On the other hand, the learned Additional Government Pleader while reiterating the contentions raised in the counter affidavit, contended that in terms of G.O.Ms.No.42, Education Department, dated 10.01.1969, it is only persons who acquire higher qualifications than the qualifications prescribed for the post held by them are entitled for grant of incentive



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increments. But, in the instant case, the B.Ed Degree said to have been acquired by the petitioner after she was promoted to the post of Middle School Headmistress, is one of the qualification so prescribed in the said post and therefore, the petitioner is not entitled for grant of incentive increments. The learned Additional Government Pleader also placed reliance on the decisions of the Division Bench of this Court in W.A.(MD).No.12124 of 2020 and Batch dated 20.12.2023.

5. This Court has carefully considered the submissions made by the learned counsels appearing on either side and perused the various orders passed by this Court as relied upon by the learned counsels on either side.

6. It is not in dispute that B.Ed. degree is one of the essential qualification prescribed for the post of Middle School Headmistress in terms of the Tamil Nadu Elementary Education Service. But, the petitioner, though, does not possess the said B.Ed, Degree, the case of the petitioner was considered for promotion to the post of Middle School Headmistress by virtue of the exemption that was granted in favour of the persons holding B.Lit (Tamil), from possessing B.Ed degree and was promoted to the post of Middle School Headmistress. No doubt the petitioner acquired



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the qualification of the B.Ed Degree after she was promoted to the post of Middle School Headmistress.

7. In order to consider whether the petitioner is entitled for claiming incentive increment in terms of G.O.Ms.No.42 dated 10.01.1969, it is necessary to examine, whether the B.Ed Degree that is said to have been acquired by the petitioner after she was promoted to the post of Middle School Headmistress is a higher qualification in terms of G.O.Ms.No.42 dated 10.01.1969 or not? The G.O.Ms.No.42, specifically deals with qualification of post graduate as a higher qualification and provides for grant of advance incentive increment in favour of such persons possessing higher qualification. The very word “higher qualification” contemplates that the same is the qualification higher than the qualification prescribed for a principle post.

8. In the instant case, admittedly the B.Ed Degree is one of the essential qualification and therefore, under no circumstances the B.Ed Degree qualification can be treated as a 'higher qualification' possessed by the petitioner, who is holding the post of Middle School Headmistress. The decisions that are rendered by the learned single Judge and the Division



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Bench relied upon by the learned counsel for the petitioner, proceeded on the footing that the second respondent/ the Director of Elementary Education, has issued a clarification dated 07.06.1991 treating the B.Ed Degree as a higher qualification and permitted the concerned District Educational Officer to continue the incentive increment granted in favour of the candidates covered by the said clarification. The basis for issuing such clarification is G.O.Ms.No.107, Education Department, dated 20.01.1976 which specifically deals with Tamil Pandits. Neither the person covered by the said clarification nor the petitioner herein are the persons appointed as Tamil Pandits nor she can claim under G.O.Ms.No.107, Education Department, dated 20.01.1976. The said clarification was issued by the Director of Elementary Education without noticing the fact that the B.Ed qualification is one of the essential qualification prescribed for the post of Middle School Headmistress, and not considered the fact that the B.Ed. Degree is not a post graduation qualification.

9. As rightly pointed out by the learned Government Advocate appearing for the respondents, the Division Bench of this Court in W.A.(MD).No.2124 of 2020 and Batch by order dated 20.12.2023 has been pleased to consider the very same aspect as to whether the B.Ed qualification is to be treated as a higher qualification in respect of the



persons holding the post of Middle School Headmistress and has been pleased to hold as under:-

“7. We found that the said argument is unacceptable in view of the fact that the parent Government Order implementing the Scheme would reveal that incentive increment is to be granted only for acquiring higher educational qualification and not for basic qualification which all are otherwise contemplated as an eligible criteria in the Rules. The said clarifications dated 07.06.1991 and 03.12.2010, cannot supersede the Government Order issued in G.O.Ms.No.42, Education Department, dated 10.01.1969, which was issued under Article 163 of the Constitution of India by the order of the Governor. Therefore, the policy decision of the Government will prevail over the qualification issued by the Subordinate Authorities namely, in the present case, the Director of Elementary Education. When the policy of the Government unambiguously stipulates that the incentive increments are to be granted for acquiring higher educational qualification and in the present case M.Ed. being considered as a Higher Educational Qualification for drawal of incentive increments, we are unable to agree with the arguments of the writ petitioners that B.Ed. degree also to be considered as



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a eligible qualification for grant of incentive increment.

8. It is not in dispute that the writ petitioners have acquired the qualification only after their promotion to the post of Middle School Headmaster and therefore, the writ petitions are not entitled for incentive increments for the qualification acquired after becoming Middle School Headmasters. However, the excess payment if any made already need not be recovered from him, since there was no misrepresentation on the part of the writ petitioners. More so, such incentive increments were wrongly granted at the instance of the Director of Elementary Education or the Subordinate authorities by wrongly interpreting the Government Policy.

9. Thus, we are in agreement with the learned Single Judge regarding setting aside the recovery alone. However, it is made clear that the writ petitioners are not entitled for incentive increments for the qualification of B.Ed., degree. Accordingly, the re-fixation done by the competent authorities stands confirmed.”



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10. The various decision that are relied upon by the learned counsel for the petitioner have not considered the aspect as to whether the B.Ed Degree has to be treated as a higher qualification or not in respect of the persons holding the post of Middle School Headmistress, but are carried away by the clarification issued by the Director through his proceedings dated 07.06.1991. The said orders have not considered the aspect as to whether the said clarification is in consonance with the G.O.Ms.No.42 or not. In view of the fact, the Division Bench in W.A.(MD).No.2124 of 2020 and Batch has taken note of the order issued in G.O.Ms.No.42 and considered the validity of clarification dated 07.06.1991 with reference to the incentive increment being claimed under G.O.Ms.No.42 dated 10.01.1969.

11. In the light of the above, this court is of the considered view that the decisions relied upon by the learned counsel for the petitioner have to be treated as *per curiam* for want of considering the crucial aspect as noted above, and not taking into consideration that the B.Ed Degree qualification is one of the prescribed qualification for the post of Middle School Headmistress and not higher qualification as per the Government order issued in G.O.Ms.No.42, dated 10.01.1969. In light of the above,



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this court with respect is inclined to follow the decision of the learned Division Bench of this Court passed in W.A.(MD).No.2124 of 2020 and Batch, order dated 20.12.2023.

12. The B.Ed Degree claimed to have been acquired by the petitioner after she was promoted to the post of Middle School Headmistress cannot be treated as a higher qualification for the post of Middle School Headmistress and accordingly, the claim of the petitioner for grant of advance/ incentive increment in terms of G.O.Ms.No.42, dated 10.01.1969 is wholly unsustainable. Under these circumstances, this Court does not find any merits in the Writ Petition and the same is accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

29.04.2024

gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

To

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MUMMINENI SUDHEER KUMAR, J.

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