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W.P. No.25001 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

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THE HONOURABLE MRS.JUSTICE N.MALA

W.P. No.25001 of 2016 and
W.M.P.No.21362 of 2016

K.G.Rajan

Vs

... Petitioner

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
- 3.The Chief Educational Officer,
Panagal Building, Saidapet,
Chennai 600 015.
- 4.The Headmaster,
Government Model Higher Secondary School,
Saidapet,
Chennai 600 015.
- 5.The Financial Advisor & Chief Accounts Officer,
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus call for the records relating to the impugned proceedings issued by the fourth respondent in Na.Ka.No.71/2016 dated 05.04.2016 and the subsequent proceedings issued by the fourth respondent in Na.Ka.No.97/2016 dated 04.07.2016 and to quash the same and consequently directing the respondents to continue to pay the incentive increment already granted to the petitioner for acquiring the M.Phil., degree in Physical Education and Sports Science.

For Petitioner : Mr.S.Neduchezhiyan

For Respondents : Mr.S.Prabhakaran,
Government Advocate R1 to R4.
R5 – No appearance.

ORDER

The writ petition is filed challenging the proceedings of the fourth respondent dated 05.04.2016 in Na.Ka.No.71/2016 as well as the subsequent proceedings issued by the fourth respondent in Na.Ka.No.97/2016 dated 04.07.2016. The petitioner seeks a direction to the respondents to continue the payment of the incentive increment already granted to him for the acquisition of the M.Phil., degree in Physical Education and Sports Science.

2. The petitioner is qualified with B.Sc., B.P.Ed., M.P.Ed., and M.Phil. The petitioner was selected and appointed to the post of Physical Education Teacher as



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per the proceedings of the Chief Educational Officer, Kancheepuram District on 31.03.1998 and joined the post on 03.04.1998. While working as Physical Education teacher, the petitioner applied for the post of Physical Director Grade-I and was selected and appointed as per the order of the Joint Director of School Education (Higher Secondary) on 27.02.2002. The petitioner joined the said post on 06.02.2002 and the petitioner's services were regularized in the post of Physical Director Grade-I with effect from 06.06.2002, on completion of probation.

3. The petitioner as per G.O.Ms.No.324 dated 24.05.1995 was eligible for an incentive increment for acquiring the M.Phil., degree in physical Education and Sports Science, which is a higher qualification in the area of Physical Education. The petitioner was sanctioned the incentive increment for the higher qualification in Physical Education from the date of appointment on 06.06.2002, onwards. While so, an audit objection was raised by the Audit Department of Education Department in respect of granting of incentive increment for acquiring M.Phil., in Physical Education and Sports Science degree. Based on this audit objection, the fourth respondent issued orders dated 05.04.2016, to recover the incentive increment granted to the petitioner from 06.06.2002, with directions to remit the same to the Government account. The petitioner, aggrieved by the order seeking to recover the incentives granted to him in violation of the Government Order, has filed the writ



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petition for the aforementioned relief.

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4. The respondents filed a counter stating that as per G.O.Ms.No.177, the petitioner was eligible to avail of the incentive increment for the M.Phil., decree only from the date of issuance of the said G.O. However, the petitioner has availed the incentive increment from 06.06.2002. Therefore, an audit objection was raised by the fifth respondent and the incentive increment paid to the petitioner from 06.06.2002 was sought to be recovered. According to the respondents, the petitioner was eligible for the incentive increment only from the date of G.O.Ms.No.177 dated 13.10.2016, therefore, the impugned order seeking to recover the incentive increment paid from 06.06.2002, was in order. The respondents submitted that there was no merit in the writ petition, and as such, the same ought to be dismissed.

5. The learned counsel for the petitioner relied on the order of this Court dated 08.08.2024 in W.P.No.1946 of 2023 and submitted that the issue raised in this petition is squarely covered by the aforesaid order. The learned counsel for the respondents did not dispute this contention. This Court in W.P.(MD).No.1771 of 2021 dated 10.01.2024, referred to the judgment of this Court in W.P.(MD).No.290 of 2018 dated 12.02.2018. Following the order dated 12.02.2018, this Court in W.P.No.1946 of 2023, rejected the stand taken by the respondents that the



petitioner was entitled for incentive increment only from 2016 by virtue of

G.O.Ms.No.177. The relevant portions of the order are extracted hereunder:

“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 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”.

.....

“

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 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



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quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.”

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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. ”

6. The present case is identical to the aforesaid case and so the said order squarely applies to this case. I therefore find that the impugned orders are unsustainable and so set aside. The writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

21.10.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

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N.MALA, J.

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To

- 1.The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
- 3.The Chief Educational Officer,
Panagal Building, Saidapet,
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