



WEB COPY



W.P.No.13608 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.13608 of 2021

T.Melbin Kala

...

Petitioner

/vs/

1. The Joint Director of School Education,
O/o. The Joint Director of School Education,
DPI Campus,
Chennai – 6.

2. The Chief Educational Officer,
Tiruvallur District,
Tiruvallur.

3. The District Educational Officer,
Tiruvallur Educational District,
Tiruvallur.

4. The Headmaster,
Government Higher Secondary School,
Mittampalli,
Tiruvallur District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India
to issue a writ of mandamus to direct the respondents to regularize the



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service of the petitioner as PG Teacher based on her P.G.Degree in M.Sc (Botany) obtained from Periyar University in the academic year Dec/Jan 2011 and to pay incentive for the same.

For Petitioner ... Mr.P.Belman

For Respondents ... Mr.P.Gurunathan
Additional Govt. Pleader for R1 to R4

ORDER

Heard Mr.P.Belman, the learned counsel for the petitioner and Mr.P.Gurunathan, the learned Additional Government Pleader for the respondents.

2. The petitioner has filed this writ petition seeking a writ of mandamus to direct the respondents to regularize her service as P.G. Teacher based on her P.G.Degree in M.Sc. (Botany) obtained from Periyar University in the academic year Dec/Jan 2011 and to pay incentive for the same.



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3. The petitioner who was appointed as P.G.Assistant by transfer to the fourth respondent Government School in the year 2005 has got her services regularized on 27.04.2009. Thereafter, the petitioner acquired P.G.degree (Botany) and subsequently appointed as P.G.Teacher on 12.07.2012. But, her services in the cadre of P.G.Assistant has not been regularized so far. However, the petitioner claims incentive for acquiring P.G. Degree in the year 2011. While she was working as B.T.Assistant, the petitioner had not obtained prior permission for doing P.G.Degree. However the earlier judicial pronouncements in this regard is relied for liberalising the process of obtaining prior permission.

4. So far as the incentive in respect of acquisition of higher degree is concerned, in a similar writ petition filed by a similarly placed person in W.P.No.5041 of 2020, orders have been passed in favour of the petitioner. In fact in the said order, the judgment of the Division Bench held in the ***The Joint Director of School Education (Higher Secondary) and others Vs. S.Vasugi and another in W.A.(MD) No.1124/2023 dated 24.07.2023*** has been referred in support of the legal position. Further, in view of the



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Government Order in G.O.Ms.No.200 Personnel and Administrative Reforms (A) Department dated 19.04.1996, the rules were regularized in obtaining prior permission and the respondents cannot deny the incentive benefit by adopting a pedantic approach. In this regard it is relevant to refer the earlier order of this Court in W.P.No.5041 of 2020 dated 30.11.2023 wherein it is held as under:

“9.In fact the above G.O.Ms.No.200, Personnel and Administrative Reforms (A) Department, dated 19.04.1996 has been issued just to liberalise the process of obtaining prior permission from the head of office itself without waiting to get an order from the Head of the department. Even after the rules were relaxed, the Respondents did not rise up to the occasion and had chosen to adopt a pedantic approach. They sat over the application for months together and later blame the Petitioner that she did not obtain prior permission in time.

10.In fact, G.O.Ms.No.200, Personnel and Administrative Reforms (A) Department, dated 19.04.1996 states that if no order has been issued within a period of 15 days from the date of the application, it shall be deemed that the Head of the Department/Head of the Office has granted permission for joining the course. The third Respondent office kept the file pending without



any orders for nearly three months. As per the above G.O., if no order is passed within a period of 15 days either by granting/rejecting/or even by returning that should be only considered as “No order passed”. Hence, the Petitioner is guarded with the deemed permission authenticated under the above G.O.Ms.No.200, Personnel and Administrative Reforms (A) Department, dated 19.04.1996. Hence, her part time M.Phil., degree cannot be considered as done without permission.

11.The Petitioner had successfully completed her M.Phil., degree in first class with A++ grade. By virtue of the impugned order dated 11.06.2019, the third Respondent has issued proceedings for rejecting even the ratification.

12.In fact, the Petitioner need not even seek ratification in view of the G.O.Ms.No.200, Personnel and Administrative Reforms (A) Department, dated 19.04.1996. She could have claimed that she had got the benefit of deemed permission under the G.O.Ms.No.200, Personnel and Administrative Reforms (A) Department, dated 19.04.1996. The Petitioner was polite enough to get a ratification by sending a request. But the Respondents without taking accountability for the delay on their part, had passed the impugned order as though the Petitioner has caused the delay.



13. Time and again, it is held by this Court that the claim of teachers for incentive increment cannot be rejected on the ground that the teacher concerned had not obtained prior permission. Mr.Kavin Castro, learned counsel for the Petitioner relied on the orders passed in The Joint Director of School Education (Higher Secondary) and others Vs. S.Vasugi and another (W.A.(MD).No.1124 of 2023) dated 24.07.2023, in support of the above position. In the said order, it is held as under:

“3. This Court find that the issue is no-more resintegra in view of the several judgments on this issue holding that the claim of teachers for incentive increment cannot be rejected on the ground that the concerned teacher had not obtained prior permission of the authorities for undergoing higher education. Since the issue has been settled by precedents, this Court is unable to countenance the arguments advanced by the learned counsel for the appellants. It is true that there are several Government Order which have insisted the requirement of permission of the educational authorities for a teacher to undergo higher education. It is to be noted that the payment of incentive increment for acquiring higher qualification is to encourage the teachers to acquire higher qualification so that the quality of education will be higher. It may be true that the teacher while in service will have to obtain prior permission as per the Government Orders . Further it is to be noted that acquiring higher qualification while in service is not



prohibited and it is only regulated. In such circumstances, acquiring higher qualification while in service without the permission is only an irregularity and that will not entitle the respondents to reject the benefit to the teachers.”

14. But the Respondents without being aware of the legal position, had rejected the application seeking permission of the Petitioner which is arbitrary and unlawful. In view of the reasons stated above, this Writ Petition is allowed and the impugned order in A.T.M.U.N513/A3/2014 dated 24.09.2014 issued by the 4th Respondent and the consequential order dated 11.06.2019 in O.M.No.2654/A5/2019 issued by the 4th Respondent are set aside and the fourth Respondent is directed consider the M.Phil degree obtained by the Petitioner, through part time mode as the degree through deemed permission and pass appropriate orders to accord her the attendant, monetary/service benefits for the same within a period of six weeks from the date of receipt of a copy of this order. No costs.”

5. In view of the above legal position, the petitioner's acquisition of P.G.Degree without getting prior permission shall not be held against her. So the petitioner's regularization in the cadre of P.G.Assistant shall not be stopped for the very reason that she did not obtain prior permission for doing P.G.Degree. The petitioner has claimed incentive for having acquired



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higher qualification in the year 2011 and she got appointed as P.G.Assistant in the year 2012. So far as the post of P.G. Assistant is concerned, the P.G.Degree is the minimum eligibility and hence it cannot be considered as higher qualification and eventually the incentive for the same. However for the period when the petitioner was B.T.Assistant and held P.G.Degree, the petitioner will be entitled to incentive as per rules as how it would have been permissible in similarly placed persons.

6. In view of the above stated reasons, this writ petition is allowed and the respondents are directed to pass orders by regularizing the service of the petitioner as P.G. Teacher based on her P.G.Degree in M.Sc (Botany) and award incentive in accordance with the observations rendered above, within a period of six weeks from the date of receipt of a copy of this order. No costs.

19.03.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
bkn



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To:

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Tiruvallur District,
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