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W.P.No.24980 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.24980, 24984, 24985, 24989, 24992 & 24993 of 2023

and

W.M.P.Nos.24402, 24405, 24406, 24410, 24413, 24414, 32549, 32551,
32569, 32572, 32576 & 32578 of 2023

W.P.No.24980 of 2023 :-

D.R.Vaishnavi

... Petitioner

Vs

1. The District Chief Educational Officer,
Krishnagiri District,
Krishnagiri.

2. The Head Master,
Government Boys Higher Secondary School,
Shoolagiri, Krishnagiri District,
Krishnagiri – 635 117.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for entire records in respect of the order dated 28.07.2023 passed by the second respondent in Na.Ka.No.48/2023 and quash the same and consequently direct the respondents to pay the advance increment to the petitioner regularly.



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In all W.Ps.

For Petitioner : Ms.N.Gomathi

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

COMMON ORDER

All these writ petitions have been filed challenging the orders dated 28.07.2023, passed by the second respondent thereby ordered to recover the advance amount which was paid to the petitioners and also revised the scale of pay.

2. The petitioners are working as B.T. Assistant in the second respondent school. Initially, all are qualified with degree and B.Ed. Thereafter they had completed their P.G. degree in M.A., and subsequently, in the year 2017, they completed their M.Phil. degree and applied for advance increment for their P.G. degree and M.Phil. degree. The second respondent accepted their claim and passed orders, during the year 2020, thereby awarded incentive increments and revised their pay scale.



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3. Subsequently, in the year 2023, the second respondent issued show cause notice as to why the advance increment granted and paid to the petitioner should not be recovered and their pay scale be revised. After submitting the explanation by the petitioners, the second respondent, by an order dated 28.07.2023, ordered to recover and also revised the pay scale. Aggrieved by the same, the petitioners filed the present writ petitions.

4. The learned counsel appearing for the petitioners submitted that after completion of their higher qualification, the petitioners applied for incentive increments. While pending application, the government passed order in G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020, thereby dispensed the advance increment as on 10.03.2020. Subsequently, by the government order in G.O.Ms.No.116 Personnel and Administrative Reforms (FR-IV) Department dated 15.10.2020, it was clarified that the above G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 came into effect from 10.03.2020. Further clarified that there is cut-off date for sanctioning advance increment and if a government servant recruited before 10.03.2020 and acquired the higher qualification or departmental test before



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10.03.2020 and orders sanctioning advance increment was not issued either due to administrative reasons or belated claims by the individuals, all such cases should be processed immediately and orders are to be issued before 31.03.2021. The cases of government servants who have acquired higher qualification prior to the date of issuance of G.O.Ms.No.34 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 and not sanctioned with advance increment and not applied for sanction of advance increment by the government servant concerned may be examined separately as per para 6 sub clause (vi) of the G.O.Ms.No.34 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 and appropriate orders to be issued before 31.03.2021.

4.1. She further submitted that as far as the petitioners are concerned, they acquired higher qualification in the year 2017 and immediately they applied for incentive increments. However, their respective claims were not considered and the same were ordered only in the year 2020. Therefore, the order of recovery cannot be sustained and it is liable to be quashed.



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5. The respondents filed counter and the learned Special Government Pleader appearing for the respondents submitted that though the petitioners were granted incentive increments, it was passed only after the government order in G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 was issued and therefore, they are entitled incentive till 10.03.2020 and thereafter, they are not entitled for incentive increments.

6. Heard the learned counsel appearing on the either side and perused the materials placed before this Court.

7. On perusal of records revealed that admittedly all the petitioners had completed their higher qualification in the year 2017 itself and applied for incentive increments in the year 2018 itself. The government passed order in G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020, thereby ordered as a policy decision, the scheme of sanction of advance increments for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled/dispensed with immediate effect.



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8. By another government order in G.O.Ms.No.116 Personnel and Administrative Reforms (FR-IV) Department dated 15.10.2020, it was clarified that the said G.O.Ms.No.37 dated 10.03.2020, came into effect from 10.03.2020, and the cases of government servants who have acquired higher qualification prior to cut off date viz., 10.03.2020 and not sanctioned with advance increments or not applied for sanctioning of advance increments by the government servant concerned, should be examined separately and appropriate orders be passed on or before 31.03.2021.

9. It is seen that after passing the government order in G.O.Ms.No.34 dated 10.03.2020 and before the clarification order in G.O.Ms.No.116 dated 15.10.2020, the second respondent allowed the claim made by the petitioners and sanctioned advance incentive increment for their respective higher qualification, from the date of their acquiring higher qualification and accordingly revised their scale of pay. The said order was passed by the second respondent, who is the Headmaster of the school.



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10. It is also seen that the particular Headmaster, who had granted incentive increments and revised the petitioners' scale of pay, was transferred and after taking charge in the post of Headmaster, the new person has issued show cause notice on the ground that the petitioners were wrongly granted incentive increments and accordingly their pay scale has to be revised. After receipt of the explanation from the petitioners, the second respondent viz., the new Headmaster cancelled the incentive increment and also revised the scale of pay of the petitioners.

11. This Court has put a specific question whether the second respondent being the Headmaster has authority/jurisdiction/power to pass order either sanction or cancel incentive increments and revise the scale of pay, for acquiring higher qualification? The learned Special Government Pleader is not able to answer the specific question. When the jurisdiction/authorization/power of the second respondent is in question, the sanction orders passed during the year 2020 and the subsequent show cause notice and also the impugned orders dated 28.07.2023, thereby cancelling the advance increment cannot be sustained and are liable to be set aside.



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12. Accordingly, the orders passed by the second respondent thereby sanctioning and also cancelling the incentive increments are hereby quashed. The first respondent is directed to forward the claim made by the petitioners, seeking advance increments for their acquiring additional higher qualification to the concerned authority, within a period of two weeks from the date of receipt of a copy of this Order. The authority concerned is directed to pass orders as per the government orders in G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 and subsequent orders G.O.Ms.No.116 Personnel and Administrative Reforms (FR-IV) Department dated 15.10.2020, and G.O.Ms.No.95 Human Resources Management (FR-IV) Department dated 26.10.2023, within a period of four weeks thereafter.

13. With the above directions, all the Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

29.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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