



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.8149 of 2017

and

W.M.P.No.8932 of 2017

A.Tamilselvi

... Petitioner

Vs.

1. The State of Tamil Nadu, Represented by its Secretary,
Department of School Education, Secretariat, Fort St.George,
Chennai – 600 009.
2. The Director of School Education,
College Road, Nungambakkam,
Chennai – 600 006.
3. The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore Region, Coimbatore.
4. The Chief Educational Officer,
Erode District, Erode.
5. The Headmaster,
Government Higher Secondary School,
A.Pudhupalayam, Erode District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order passed by the 5th respondent in Na.Ka. NO.276/ 2017, dated 18.01.2017 and quash the same as illegal and consequently direct the Respondents to sanction incentive increments for possessing M.Phil in Physical



WEB COPY

W.P.No.8149



Education to the petitioner in the light of the G.O.Ms. No.324, Education, Science and Technology Department dated 25.04.1995.

For Petitioner : Mr.Devaraj Mahesh

For Respondents : Mr.K.H.Ravikumar,

Government Advocate

ORDER

This writ petition has been filed challenging the proceedings bearing ந.க.எண்.276/2017, dated 18.01.2017, issued by the Respondent No.5, proposing to recover certain amounts from the petitioner, which were paid on granting incentive increments for having acquired M.Phil., Degree in Physical Education in terms of G.O (Ms) No.324, Education, Science and Technology Department, dated 25.04.1995, on the ground that the petitioner is entitled for such incentive increment only with effect from 13.10.2016 i.e., the date on which G.O (Ms) No.177, School Education Department, dated 13.10.2016 came to be issued.

2. The learned counsel for the petitioner contended that the entitlement of the petitioner for incentive increment for having acquired M.Phil., Degree in Physical Education is in terms of the order issued by the Government in G.O (Ms) No.324, Education, Science and Technology Department, dated 25.04.1995, but not basing upon G.O (Ms) No.177, School Education Department, dated 13.10.2016 and thus, the petitioner was rightly granted the



incentive increment for having acquired the higher qualification viz., M.Phil., Degree in Physical Education and therefore, the impugned order dated 18.01.2017, passed by the Respondent No.5, on the ground that there was an audit objection is totally unsustainable.

3. This court also carefully perused the order issued in G.O (Ms) No.324, Education, Science and Technology Department, dated 25.04.1995, and is convinced that the Physical Education Teacher is entitled for grant of incentive increment on acquiring the higher qualification in Physical Education and the petitioner herein, who is working as a Physical Education Teacher, has infact acquired such higher education viz., M.Phil., Degree in Physical Education on 18.10.2005 and accordingly, he was granted the incentive increment in terms of G.O (Ms) No.324, Education, Science and Technology Department, dated 25.04.1995. The said incentive increment is now sought to be restricted only from the date of issuance of G.O (Ms) No.177, School Education Department, dated 13.10.2016, instead of allowing the petitioner to retain the same from the date of issuance of G.O (Ms) No.324, Education, Science and Technology Department, dated 25.04.1995.

4. In view of the specific orders issued in G.O (Ms) No.324, Education,



Science and Technology Department, dated 25.04.1995, the entitlement of the petitioner for grant of incentive increments cannot be disputed by the respondents on the ground of an audit objection.

5. Further, when a similar issue has fallen for consideration before the co-ordinate bench of this court in W.P.Nos.1363 to 1366 of 2015 and this court by an order dated 25.10.2024 held as under:-

“19. Further as referred earlier the impugned order only states that the petitioner are entitled for incentive from the date of G.O. and as on that date G.O. No.177 was not even issued. Therefore at the best, it could only refer to G.O.No.324 dated 25.04.1995 based on which the petitioners are entitled for the incentives which has been rightly granted. Further the recovery is sought to be made based on the audit objection with out issuing any notice to the petitioners and affording them an opportunity of hearing, which is in clear violation of principles of natural justice. Further when the benefits have been granted by the respondents based on their own calculations and not due to the mistake on the part of the petitioners, the impugned order in seeking to recover the benefits granted cannot be sustained.

20. As far as the petitioners are concerned, having acquired two higher qualifications as mentioned in the chart above and admittedly since they possess an M.Phil. Degree in Physical Education, they are covered under G.O.(Ms.)No.324 of the Education, Science and Technology Department (E2) dated 25.04.1995 and are eligible for two incentive increments. It was only based on this G.O., the benefit of incentive increments have been extended to the petitioners by the order of the third respondent in the year 2013.

6. In the light of the above, the impugned order bearing ந.க.எண்.276/



2017, Dated 18.01.2017 cannot be sustained and the same is accordingly quashed. If any amounts are recovered from the petitioner pursuant to the impugned order, the same shall be refunded to the petitioner as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

20.11.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary to Government of Tamil Nadu,
Department of School Education,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Director of School Education,
College Road, Nungambakkam,
Chennai – 600 006.
3. The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore Region, Coimbatore.



W.P.No.8149



4. The Chief Educational Officer,
Erode District, Erode.

5. The Headmaster,
Government Higher Secondary School,
A.Pudhupalayam, Erode District.

WEB COPY



WEB COPY

W.P.No.8149



MUMMINENI SUDHEER KUMAR, J.

skr

W.P.No.8149 of 2017

20.11.2024