



W.P(MD)No.1771 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.1771 of 2021

and

W.M.P(MD)No.1506 of 2021

C.Rajendran

... Petitioner

Vs.

1.The Regional Accountants Officer,
(Audit),
School Education Department,
Thallakulam,
Madurai-2.

2.The Secretary,
Nadar Saraswathy Higher Secondary School,
R.S.Road, Theni.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call the proceedings of the 1st respondent made in Na.Ka.No.3960/A3/2018, dated 17.11.2018 and quash the same as illegal.

For Petitioner : Mr.R.Murali

For R1 : Mr.N.Ramesh Arumugam
Government Advocate

For R2 : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates



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ORDER

The present writ petition has been filed to call the proceedings of the 1st respondent made in Na.Ka.No.3960/A3/2018, dated 17.11.2018 and quash the same as illegal.

2. The petitioner has completed his degree in Physical Education and post graduation in Physical Education before 1991. He joined as a Physical Education Teacher in the 2nd respondent school on 15.07.1991. The 2nd respondent school is a private aided school. Subsequently, he has completed his M.Phil in Physical Education through Annamalai University during September 2008. Thereafter, he was promoted to the post of Physical Education Director on 10.06.2010. His higher studies were entered in his SR book as well. The petitioner was granted with one incentive increment for M.Ped., and for M.Phil, he was granted with second incentive increment from 01.07.2010 and that was approved by the District Education Officer. However, the 1st respondent conducted a routine audit for all the teachers in Government and aided schools. In such course, the 1st respondent issued proceedings to the 2nd respondent on 17.11.2018 by arriving at a conclusion that the incentive increment granted for M.Phil course in favour of the petitioner from 01.07.2010 is improper and



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hence, he is eligible for incentive increment only from 13.10.2016 i.e., from the date of G.O.No.177 School Education Department. Challenging the same, this writ petition came to be filed.

3. The learned counsel for the petitioner submitted that the impugned proceedings, dated 17.11.2018 has been passed by the 1st respondent fully relying upon G.O.Ms.No.177 School Education Department, 13.10.2016. He drew my attention to the Government Order in G.O.Ms.No.624 Education (E2) Department, dated 13.07.1992 which was provided with incentive increments for the Physical Education Teachers if they have higher education in physical education. He drew my attention to another Government Order in G.O.Ms.No. 324, Education Science and Technology Department (E2), dated 25.04.1995 wherein it is mandated that the Physical Education Teachers would be entitled for incentive increments for higher qualification only in Physical Education.

4. It is only on that basis of the aforesaid Government Orders, the petitioner was sanctioned with incentive increment for having acquired the degree of M.Phil in Physical Education from Annamalai University with effect from 01.07.2010. However, relying upon G.O.Ms.,No.177 School Education



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Department, 13.10.2016 citing the audit objection, the 1st respondent has passed the impugned order that the petitioner is entitled for incentive increment for M.Phil course only from 13.10.2016 and the same is bad in the eye of law. That apart, he relied upon several judgments passed by this Court in W.P(MD)No. 1890 of 2009, dated 12.06.2009, W.P(MD)No.13965 of 2011, dated 25.07.2013, W.P(MD)No.7092 of 2016, dated 28.06.2017 and W.P(MD)No. 290 of 2018, dated 12.02.2018 wherein this Court has dealt with similar cases and grant of incentive increment for teachers having acquired M.Phil in the same subject was allowed in favour of the petitioners therein.

5. Per contra, the learned Government Advocate vehemently submitted that in all the cases which had been relied upon by the learned counsel for the petitioner, G.O.No.177, dated 13.10.2016 was not referred and the Court whose attention is not drawn to the said Government Orders passed favourable orders in the case to the petitioners therein. The Physical Education Teachers / Physical Education Directors were made eligible for incentive increment for higher qualification in their field and the Government of Tamil Nadu issued G.O.No.324, dated 25.04.1995 directing that the Physical Education Teachers can be granted with incentive increment for acquiring higher qualification in



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Physical Education. The qualification of M.Phil was not identified as a higher qualification for granting incentive increment. Thus the Physical Education Teachers were also granted incentive increments subject to a maximum of two. However, higher qualification is that the qualification acquired by the teachers in addition to the prescribed qualification for the post or the qualification based on which the teacher was appointed. He further submitted that there is a specific clause in G.O.Ms.No.177, dated 13.10.2016 which would mandate that the teachers who have acquired M.Phil qualification would be entitled for incentive increment only from the date of Government Order, i.e., 13.10.2016. Only in terms of the the said clause of G.O.Ms.No.177, the impugned order came to be passed and that is fully in consonance with the mandates of the Government Order. Hence, the impugned order need not be interfered and he pressed for dismissal of the writ petition.

6. The learned counsel appearing for the 2nd respondent submitted that the incentive increment which was granted to the petitioner was sanctioned by the educational authorities and interfering with the same after a period of 5 years is *per se* illegal.



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7. Heard the learned counsel on either side and perused the materials available on record.

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. Such argument is not sustainable in view of the order passed by this Court in various cases which were relied upon by the



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learned counsel for the petitioner. To mention specifically, in W.P(MD)No.290 of 2018 even verification of G.O.Ms.No.177 in this aspect has been clearly referred to vide order, dated 12.02.2018. The relevant portion of which is extracted as follow:

“3.In the present case, it is not in dispute that the petitioner herein acquired higher qualification only in physical education. Considering these aspects, the petitioner was granted an incentive increment.

4.The same is now sought to be reviewed in view of the audit objection. The audit objection is to the effect that in view of the issuance of G.O.Ms.No.177 School Education Department dated 13.10.2016, the petitioner can be granted incentive increment only from the date of issuance of G.O.Ms.No.177. Therefore, the incentive earlier granted is sought to be recalled. The petitioner has been directed to remit the arrears of such increment amounts already received by him.

5.The learned counsel appearing for the petitioner contended that the writ petitioner was rightly granted incentive increment earlier and that therefore the order directing recovery as well as re-fixation of his pay will have to be quashed.

6.Per contra, the learned Special Government Pleader appearing for the respondents contended that there is a distinction between the Physical Education Teacher and Physical Director and that only the Physical Education Teachers could have been granted



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incentive increment for acquiring higher qualification and the petitioner being a Physical Director was not eligible to be conferred with such a 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



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

9. Fully in consonance with the said order passed by this Court, this Court hereby quash the impugned order, dated 17.11.2018. It is also brought to the notice of the Court by the learned counsel for the petitioner that at the time of retirement of the petitioner on 30.09.2022, he was compelled to pay the audit objection amount for the purpose of availing his pensionary benefits and the said amount has already been paid by the petitioner. In view of quashing of the impugned order, dated 17.11.2018 by this Court in this case, the 1st respondent is directed to refund the same.

10. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.01.2024

NCC : Yes / No
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Internet : Yes

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L.VICTORIA GOWRI, J.

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To

The Regional Accountants Officer (Audit),
School Education Department,
Thallakulam,
Madurai-2.

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