



W.P.(MD).No.5789 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.5789 of 2021

and

W.M.P.(MD)No.4552 of 2021

P.Joy May Malar

...Petitioner

Vs.

- 1.The Director of School Education,
O/o. The Director of School Education,
DPI Compound,
College Road,
Chennai.
- 2.The Chief Educational Officer,
Office of the Chief Educational Office,
Tenkasi,
Tenkasi District.
- 3.The District Educational Officer,
O/o, the District Educational Office,
Sankarankovil,
Tenkasi District.
- 4.The Block Educational Officer,
O/o, the Block Educational Office,
Sankarankovil,
Tenkasi District.



W.P.(MD).No.5789 of 2021

5.The Correspondent,
T.D.T.A. Primary School,
Sankarankovil,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to sanction incentive increment to the petitioner for having acquired M.A., and M.Ed., Degree as was granted in respect of the similarly placed persons vide G.O.(3D)No.13, School Education Department dated 06.02.2015 and by considering the petitioner's representation dated 25.11.2020 within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan,
Senior Counsel,
For Ajmal Associates

For R-1 to R-4 : Mr.M.Sarangan,
Additional Government Pleader

For R-5 : No appearance

ORDER

The present writ petition has been filed seeking direction to the respondents to sanction incentive increment to the petitioner for having acquired M.A., and M.Ed., Degree as was granted in respect of the similarly



W.P.(MD).No.5789 of 2021

placed persons vide G.O.(3D)No.13, School Education Department, dated 06.02.2015 and by considering the petitioner's representation dated 25.11.2020.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

The petitioner was initially appointed as Secondary Grade Teacher on 05.12.1986 in the 5th respondent School and her appointment was duly approved by the 3rd respondent. At the time of appointment, an undertaking was obtained from the petitioner to the effect that she should not claim any incentive for the possession of B.A., and B.Ed. After getting due permission from the department, the petitioner acquired M.A., degree in the year 1991 and M.Ed., degree in the year 1996. Following which, she was granted with incentive increment for the higher qualification of M.A., and M.Ed., degree. Subsequently, the said incentive increment came to be cancelled without putting the petitioner on notice. However, the respondents have made SR entry to that effect. Since the petitioner had acquired M.A., and M.Ed., degree after getting the permission from the Department, she is eligible for getting incentive increment for having acquired said qualification. Hence, the 5th respondent



W.P.(MD).No.5789 of 2021

School had sent a proposal to the 3rd respondent, requesting to sanction incentive increment. However, the said proposal was not considered and hence, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner's undertaking was with respect to the qualification of B.A., and B.Ed degree at the time of being appointed as a Secondary Grade Teacher, since the qualification necessary for being appointed as Secondary Grade Teacher is only a Teacher Training Course. Since the petitioner was appointed as a special case, an undertaking was obtained from her by the Department for those higher qualification which she possessed at the time of appointment. However, the further higher qualifications of M.A., and M.Ed., degree were acquired by her after being appointed as Secondary Grade Teacher, that too with the permission of the Department. Hence, having sanctioned with incentive increment at the first instance, later without putting the petitioner on notice, the Department has cancelled the aforesaid incentive increment and such an exercise is violation of principles of natural justice. Hence, he pressed for allowing the writ petition.



W.P.(MD).No.5789 of 2021

WEB COPY

4. The 3rd respondent has filed a counter and the learned Additional Government Pleader Mr.M.Sarangan, appearing for the respondents 1 to 4 submitted that it is not the vested right of the petitioner to claim incentive increment for having obtained higher qualification despite giving an undertaking that she would not claim the same. He insisted upon the lapses of 17 years with respect to the proposal sent by the 5th respondent School to the 3rd respondent requesting incentive increment for the petitioner. That apart, in view of G.O.Ms.No. 95 dated 26.10.2023, School Education Department pertaining to change in the grant of incentive increment as a one time measure, the proposal of the 5th respondent School, claiming incentive increment for the petitioner cannot be considered. Hence, he pressed for dismissal of the writ petition.

5. The fulcrum of this case is the claim of the petitioner seeking incentive increment for acquiring higher qualification after being appointed as Secondary Grade Teacher as early as in the year 1991 and 1996. In the instant case, having sanctioned with an incentive increment at the first instance, later the



W.P.(MD).No.5789 of 2021

Department cancelled the same without putting the petitioner or the 5th respondent School on notice.

6. As far the question of latches which has been raised by the learned Additional Government Pleader is concerned, in this case, there is no delay at all since the petitioner was sanctioned with an incentive increment at the first instance, and only thereafter, on cancellation of the grant of incentive increment, the 5th respondent School had sent a proposal seeking incentive increment for the petitioner for acquiring higher qualification and the same cannot be considered as a fresh proposal in view of the continuing effect of the relief sought for by the 5th respondent School on behalf of the petitioner.

7. Hence, the issue in hand is no more res integra and the Hon'ble Division Bench of this Court in ***W.A.(MD)No.1162 of 2023 dated 26.07.2023*** has dealt with a similar issue and the relevant portion of the case which is applicable to the facts and circumstances of this case is extracted as follows:

“2. The facts are not in dispute. The petitioner was initially appointed as Secondary Grade Teacher on 29.04.1998 and at that time, she had possessed B.A. History and B.Ed. degree. The qualification prescribed for the post of Secondary Grade Teacher is



WEB COPY

*only a pass in Teacher Training Course. However, since the petitioner with qualification of B.T. Assistant was appointed with a special permission at the time of approval of appointment, an undertaking has been taken from the petitioner that she will not claim any incentive increment for possessing higher qualifications. But however, after appointment, she subsequently completed M.A. degree in History in the year 2013 and when incentive has been claimed for the said degree, the same was rejected based on the undertaking. Since the higher qualification ie., B.A., and B.Ed., were taken in lieu of the original qualification of possessing Teacher Training Course, an undertaking was obtained from the petitioner. But however, that cannot be applied for further higher qualification obtained thereafter. This issue was already considered and answered by this Court in **W.A(MD)No.511 of 2011- State of Tamil Nadu Vs. Louis Rani** and the Special Leave Petition preferred by the respondents was also dismissed and thereafter, the said judgment was implemented. Thereafter, the said dictum has been followed specifically in other cases. Therefore, the learned Single Judge of this Court following the said ratio allowed the writ petition.”*

8. Fully fortified by the Judgment of the Hon'ble Division Bench of this Court extracted supra, I am of the considered view that the respondents should immediately act upon the proposal which has been forwarded by the 5th respondent School to the 3rd respondent and sanction incentive increment to the



W.P.(MD).No.5789 of 2021

petitioner for having acquired M.A., and M.Ed., degree by considering the petitioner's representation dated 25.11.2020 within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Sml

To

1.The Director of School Education,
O/o. The Director of School Education,
DPI Compound,
College Road,
Chennai.

2.The Chief Educational Officer,
Office of the Chief Educational Office,
Tenkasi,
Tenkasi District.

3.The District Educational Officer,
O/o, the District Educational Office,
Sankarankovil, Tenkasi District.

4.The Block Educational Officer,
O/o, the Block Educational Office,



WEB C

Sankarankovil,
Tenkasi District.



W.P.(MD).No.5789 of 2021



WEB COPY



W.P.(MD).No.5789 of 2021

L.VICTORIA GOWRI, J.

Sml

W.P.(MD).No.5789 of 2021

18.04.2024