



W.P.(MD)No.7523 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.7523 of 2021

S.Vertivel Chezhan

... Petitioner

Vs.

1.The District Educational Officer,
Sivakasi Educational District,
Sivakasi,
Virudhunagar District.

2.The Block Educational Officer,
Watrap Block,
Watrap Taluk,
Maharajapuram,
Virudhunagar District.

3.The Head Mistress,
Panchayat Union Middle School,
Nedungulam,
Watrap Block,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its proceedings bearing Aa.The.Mu.No.175/A1/2021 dated 15.03.2021 and to quash the same and consequently direct the respondents to sanction and disburse incentive increment for passing M.Phil by considering the application submitted by the petitioner dated 08.03.2021.



W.P.(MD)No.7523 of 2021

WEB COPY

For Petitioner
For Respondents

: Mr.S.C.Herold Singh
: Mr.M.Sarangan
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the proceedings of the second respondent bearing Aa.The.Mu.No.175.A1.2021 dated 15.03.2021 and consequently direct the respondents to sanction and disburse incentive increment for passing M.Phil by considering the application submitted by the petitioner on 08.03.2021.

2.The learned counsel appearing for the petitioner submitted that the petitioner after completing his higher secondary joined B.A., in English and successfully completed the same during 1994 and he also completed B.A., during 1995. Further he completed M.A., English during November 1998. He participated in the selection process conducted by the Teachers Recruitment Board for the appointment of Teachers during 2003 and was selected in the selection process following which, he joined service as BT Assistant in English on 02.07.2004 at Panchayat Union Middle School, Thali Union, Krishnagiri District. He was further transferred to various places and currently he is working as BT Assistant English in the third respondent School. On the basis of Rules, he was sanctioned with one incentive increment during 2006 with effect from the date of joining for possessing M.A., English. He further joined M.Phil



W.P.(MD)No.7523 of 2021

degree and successfully completed the same during 2014. While so, he was suspended from service on 07.08.2014 and after a prolonged legal battle by the order of this Court, his suspension was revoked and was permitted to further join with effect from 01.03.2009. From the date of joining, the petitioner has been requesting the respondents for incentive increment for obtaining the degree of M.Phil. However, one such application dated 29.10.2020 was returned for the reason that the petitioner did not avail prior permission before joining the course. But, similarly placed persons were granted one incentive increment for completing M.Phil course and hence once again he made a request through proper channel on 08.03.2021 for incentive increment. The said application was forwarded to the second respondent. However, on the advice of the third respondent on the basis of G.O.Ms.No.37 dated 10.03.2020, the said proposal was returned. Challenging the same, the Writ petition has been filed.

3.The learned counsel appearing for the petitioner relying upon the order passed by this Court in W.P.(MD)Nos.16574 and 16576 of 2019 dated 04.12.2019 categorically contended that the petitioner is entitled for incentive increment. He also relied upon the order passed by this Court in W.P.(MD)No.3735 of 2021 dated 25.02.2021, in which this Court has directed the respondent Authorities to consider the candidature of the petitioner for grant of incentive increment for having possessed



W.P.(MD)No.7523 of 2021

higher educational degree. On the basis of the aforesaid orders of this Court, the learned counsel pressed for allowing the Writ Petition.

4.The first respondent has filed a counter affidavit and the learned Additional Government Pleader categorically submitted that the Government has issued a Government order in G.O.Ms.No.37, Personal and Administrative Reforms Department, dated 10.03.2020 and G.O.Ms.No.116, Personal and Administrative Reforms Department dated 15.10.2020, wherein the scheme of granting advance increment to all the departments has been cancelled. That apart he insisted that in the said G.O.Ms.No.37 under Clause 6 Subclause 6 and 7, it has been stated that the Teacher would not be entitled to incentive increment if no prior orders are passed and no fresh or new proposals would be entertained. On that basis, he pressed for dismissal of the Writ Petition.

5.Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents and carefully perused the materials available on record.

6.The instant case in hand is no more *res integra* and the Hon'ble Division Bench of this Court in W.A.No.1202 of 2023 dated 15.11.2023, has dealt with a similar case and a relevant portion of the same is extracted as follows:-



W.P.(MD)No.7523 of 2021

"4.The learned Judge, on appreciation of the rival submissions, allowed the writ petition by order dated 23.11.2022. The relevant passage of the same reads as under:

"7. Admittedly, G.O. Ms. No. 37, Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 does not refer to G.O. Ms. No. 220 dated 27.10.2017 relied upon by the petitioner for grant of third incentive increment. G.O. Ms. No. 37 dated 10.03.2020 refers to various Government Orders which are ten in number, but nowhere G.O. Ms. No. 220 dated 27.10.2017 which the petitioner relied upon is mentioned. Though the respondents may contend that G.O. Ms. No. 220 dated 27.10.2017 has been superseded by G.O. Ms. No. 37 dated 10.03.2020, this Court cannot accept the said contention in view of the fact that G.O. Ms. No. 37 dated 10.03.2020 has been issued by Personnel and Administrative Reforms (FR-IV) Department, whereas G.O. Ms. No. 220 dated 27.10.2017 has been issued by the School Education (S.E. 5(2)) Department and further, there is no reference to G.O. Ms. No. 220 dated 27.10.2017.

8. Though in G.O. Ms. No. 37 dated 10.03.2020, there is an observation that similar orders were issued by various other departments for sanctioning advance increments to certain category of staff of those departments for acquiring post graduate/Ph.D degrees in the respective subjects, admittedly, no similar order as that of G.O. Ms. No. 37 dated 10.03.2020, has been passed by School Education Department subsequent to the passing of the G.O. Ms. No. 220 dated



WEB COPY



W.P.(MD)No.7523 of 2021

27.10.2017 by the School Education Department. Therefore, the said observation will not aid the respondents in denying the petitioner-s claim for third incentive increment.

9. The Full Bench decision of this Court dated 29.04.2022 relied upon by the learned Additional Government Pleader will also not aid the case of the respondents in view of the fact that the Full Bench of this Court in the operative portion of its order has observed that under special circumstances, the Government Orders may have been passed enabling an employee to get more than two incentive increments. G.O. Ms. No. 220 dated 27.10.2017 relied upon by the petitioner is exclusively meant for Tamil Pandits and as per the said G.O., the third incentive increment is payable on completion of M. Ed degree on or before 09.12.1993 which has to be necessarily considered as a special circumstance.

10. Admittedly, the petitioner has also completed M. Ed degree before 09.12.1993. Being a special circumstance, that too, when G.O. Ms. No. 37 dated 10.03.2020 has not superseded G.O. Ms. No. 220 dated 27.10.2017, as seen from the G.O. Ms. No. 37 dated 10.03.2020, necessarily the third incentive increment sought for by the petitioner ought to have been granted by the fourth respondent. But the fourth respondent, though observed that the petitioner is entitled for third incentive increment, has erroneously rejected the same without assigning any reason.

11. For the foregoing reasons, this Court is of



WEB COPY



W.P.(MD)No.7523 of 2021

the considered view that the impugned order dated 29.10.2021 passed by the fourth respondent has to be quashed and the writ petition will have to be allowed.

12. Accordingly, the impugned order dated 29.10.2021 issued by the fourth respondent is hereby quashed and the fourth respondent is directed to pay the third incentive increment to the petitioner based on his M. Ed qualification obtained prior to 09.12.1993, within a period of eight weeks from the date of receipt of a copy of this Order.

13. With the aforesaid direction, this writ petition is allowed. No costs."

5. Assailing the aforesaid order dated 23.11.2022 passed by the learned Judge, the present writ appeal is filed.

13.It is pertinent to mention at this juncture that even before the respondent submitted his representation, the Government issued G.O. Ms. No.37 dated 10.03.2020, whereby a policy decision was taken to dispense with the payment of incentive increment. Therefore, placing reliance on the same, the fourth appellant has rightly passed the order of rejection dated 29.10.2021. Further, the Government issued G.O. (Ms) No.116, Personnel and Administrative Reforms (FR~IV) Department dated 15.10.2020 in which specific reference was made to various other Government orders passed in relation to incentive increment, including G.O. Ms. No.37, Personnel and Administrative Reforms (FR~IV) Department dated 10.03.2020; and it was stated in



W.P.(MD)No.7523 of 2021

para No.4 (6) as follows:

“6. Whether the other Government orders issued with respect to this subject in several departments and not mentioned in the Government order 1st read above are also cancelled/dispensed?

Yes. As per para 6 (i) of the Government Order 1st read above, all the Government Orders/Letters/Instructions issued related to this subject prior to 10.03.2020 by all the departments and not mentioned in the Government Order 1st read above are also stands cancelled/dispensed with effect from 10.03.2020.”

Thus, it is evident that by G.O. Ms. No.116 dated 15.10.2020, a specific clarification has been issued with respect to enforceability or otherwise of G.O. Ms. No.37 dated 10.03.2020 as also various other government orders. It is further evident that the Government had reiterated the policy decision to dispense with the scheme of sanction of advance increment for acquiring higher education in all the departments and all the orders issued by all the departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled with immediate effect. Without considering the same, the learned Judge has allowed the writ petition filed by the respondent herein by the order impugned herein, which cannot be allowed to be sustained.”



W.P.(MD)No.7523 of 2021

7. Even in this case the petitioner had made an application on 08.03.2021 which came to be returned by the impugned order dated 15.03.2021. Fully fortified by the order passed by the Hon'ble Division Bench of this Court which is extracted supra, this Court is of the considered view that the second respondent has rightly returned the application for incentive increment made by the petitioner on 08.03.2021.

8. Accordingly, the Writ Petition fails and the same is dismissed. There shall be no order as to costs.

03.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Mrn

To

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W.P.(MD)No.7523 of 2021

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.7523 of 2021

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