



REV. APLW.(MD)Nos.85 to 92 and 98 to 102 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE MRS. JUSTICE S.SRIMATHY

REV. APLW(MD)Nos.85 to 92 and 98 to 102 of 2024

REV.APLW(MD)No.85 of 2024:

T. Justin Prabhu

... Petitioner

VS.

- 1.The Secretary to Government,
School Educational Department,
Government of Tamil Nadu,
Fort St. George, Chennai – 9.
- 2.The Director of School Education,
Office of the Director of School Education,
Chennai – 6.
- 3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 4.The Zonal Accounts Officer (Audits),
School Educational Department,
Madurai-2.



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5. The Headmaster,
Government Higher Secondary School,
Ramanathapuram District.

... Respondents

Review Application is filed under Section 114 and Order 47 Rule 1 of C.P.C. to review as against the order made in W.P.(MD)No.15231 of 2016, dated 26.09.2022 by this Court.

In all cases:

For Petitioner : Mr.V.Panner Selvam
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

COMMON ORDER

The present Review Application Rev.AplW(MD)No.85 of 2024 has been filed seeking to review the order, dated 26.09.2022, passed in W.P.(MD)No.15231 of 2016 in so far as 50% recovery and re-fixation are concerned.

2. The prayer in the writ petition was to quash the order, dated 11.06.2016 passed by the 2nd respondent and consequential order dated 28.06.2016 passed by the 3rd respondent. The contention of the petitioner in the writ petition is that they are



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eligible for incentive increment for higher qualification from the last date of examination of the higher qualification.

3. It is seen that the incentive increment for higher qualification of M.Ed. was stopped, since the Universities had removed the said course of M.Ed. (Distance Education) from the syllabus. This has caused prejudice to some persons who could not get the 2nd incentive increment for the higher qualification. In the total service, any person would be entitled to two incentive increments, but due to removal of the course, some persons could not get the 2nd incentive increment. Hence, the Government had taken a policy decision to grant incentive increment for the higher qualifications of M.Phil., and Ph.D., through G.O.(1)(D)No.18, School Education, dated 18.01.2013. This G.O., was misconstrued by both the departments as well as the beneficiaries and they have started claiming incentive increment for the higher qualifications of M.Phil. and Ph.D. prior to the date of the said G.O. Hence, in order to clarify the same, the Government had issued a clarification in Government Letter No.129 of the Principal Secretary to the Government, School Education dated 17.07.2013 and had fixed the cut-off date as 18.01.2013, on this date the above said



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G.O.(1)(D)No.18 was issued.

4. But the petitioners are relying on Rule 26(e)(2) of the Tamil Nadu Fundamental Rules wherein it states that the increment can be disbursed from the date of last examination. The said contention of the petitioners in W.P.(MD)Nos. 13832 of 2015 and batch was declined by this Court and this Court disposed of the batch of writ petitions. Aggrieved over the present review applications are filed.

5. The contention of the petitioners in all the review applications is that the FR 26 was not considered by this Court. It is seen that this Court had considered the issue of FR and has held that the policy decision to grant incentive increment for the course of M.Phil. and Ph.D. was taken from 18.01.2013 based on the G.O.(1)(D)No. 18 and hence, the same is applicable from the date of issuance of the G.O. and not from the date of completion of the course. It is a settled proposition that any G.O. would come into effect from the date of issuance of the said G.O. and not prior to the said date. In the present case, the same is confirmed by the subsequent issuance of the Government Letter No.129. Further, there is no right to claim incentive increment



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for the courses of M.Phil., and Ph.D., prior to G.O.(1)(D)No.18 and hence, without any right the petitioners cannot claim any incentive increment for the course of M.Phil., and Ph.D., prior to G.O.(1)(D)No.18. If the contention of the petitioner is accepted then the incentive increment would be granted when there is no provision to grant incentive increment for the said course of M.Phil., and Ph.D. Hence, the contention of the petitioner is rejected.

6. The Learned Counsel appearing for the petitioners in all the review applications submitted that in similar circumstances relief had been granted in several judgments and he relied on the order passed in W.P.No.15859 of 2014, dated 28.03.2019. On perusing the said judgment, it is seen that the Court has not considered the issue that any G.O., would come into effect from the date of the issuance of the G.O., and also has not considered whether there was any right to claim incentive increment prior to G.O.(1)(D)No.18. Further, it is seen that the Learned Single Judge had referred a judgment of the Hon'ble Division Bench passed in W.A.No.1664 of 2016, dated 29.06.2018. In the said judgment, the issue is whether a Government employee is entitled to third incentive increment. While



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considering the same, the Hon'ble Division Bench had held that a Government employee is entitled to two incentive increments for higher qualification in their entire service and not entitled to third incentive increment. The Hon'ble Division Bench had not considered the issue whether the FR 26 can be applied when there is no policy decision to grant incentive increment for M.Phil., course. Simply because the FR 26 states from the last date of examination, the incentive increment cannot be granted unless there is supporting G.O., to claim incentive increment for M.Phil., course on the date of examination. To put it in other way, on the last date of M.Phil., examination there was no provision to grant any incentive increment for M.Phil., course. In such circumstances, the claim for incentive increment for higher qualification of M.Phil., from the date of last examination is illegal. Therefore, the said Judgment of the Hon'ble Division Bench has not dealt with the issue raised in the present case and hence, the same is not applicable to the present case.

7. The petitioners had relied on the judgment made by the Hon'ble Division Bench of this Court passed in W.A.(MD)No.94 of 2022, wherein it is held that incentive increment which were already paid need not be recovered. The said issue is



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elaborately considered in the impugned order passed by this Court. It is seen that at the time of filing the writ petitions, all the petitioners were in service and hence, the the judgment of *State of Punjab and others Vs. Rafiq Mashi (White Washer) and others* reported in (2015) 4 SCC 334 is not applicable to the present case. Also it is held that the said judgment in *Rafiq Mashi's case* is distinguished and clarified in the judgment of *State of Punjab and Haryana and others Vs. Jagdev Singh* reported in (2016) 14 SCC 267. Therefore, the aforesaid said judgment passed in W.A.(MD)No.94 of 2022 is not applicable to the present case and further, there is no ratio deciding in the aforesaid judgment.

8. The Learned Counsel appearing for the petitioners further relied on judgment rendered in W.P.(MD)No.9563 of 2014, wherein it is seen that the Court had held that the incentive increment was granted to encourage the Government servant to qualify themselves. The said concept of encouragement had lost its importance over the period of time, since everyone are acquiring qualification after joining the service. Further, the said incentive increment would be added to the salary and the said component of incentive increment also would grow along with



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time scale of pay. In other words, the said incentive increment would turn into “time scale of incentive increment”, hence, now the Government is granting one-time payment of incentive increment. Therefore, such theories cannot be applied to the present situation unless it is supported by any provision of law, rules and Government orders. Hence, the said judgment and the judgments referred thereunder are not applicable to the present case.

9. The Learned Counsel appearing for the petitioners finally tried to convince the Court stating that atleast 50% recovery may be reduced. It is seen that all the petitioners were in service at the time of passing the impugned orders. By considering this fact, this Court had granted a relief to recover only 50% from the excess amount paid to the petitioners. Therefore, this Court is of the considered opinion that the review applicants had not raised any legal sustainable ground to entertain the review applications.



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10. Hence, this Court declines to entertain the review applications and all the review applications are dismissed. No costs.

06.06.2024

Index: Yes / No

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- 2.The Director of School Education,
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Chennai – 6.
- 3.The Chief Educational Officer,
Ramanathapuram District,
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- 4.The Zonal Accounts Officer (Audits),
School Educational Department,
Madurai-2.
5. The Headmaster,
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- 6.The Headmaster,
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- 7.The Headmaster,
Government Girls Higher Secondary School,
Paramakudi, Ramanathapuram District.
- 8.The Headmaster,
R.S.Government Higher Secondary School,
Paramakudi, Ramanathapuram District.
- 9.The Headmaster,
Government Girls High School,
Mandam Camp, Ramanathapuram District.
- 10.The Headmaster,
Government Girls Higher Secondary School,
Panikulam, Ramanathapuram District.
- 11.The Headmaster,
Government Higher Secondary School,
Sathankulam, Ramanathapuram District.
- 12.The Headmaster,
S.N.V.Government Higher Secondary School,
Emaneswaram, Ramanathapuram District.
- 13.The District Educational Officer,
Paramakudi, Ramanathapuram District.
- 14.The Secretary,
Ayur Vishya Higher Secondary School,
Paramakudi, Ramanathapuram District.



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- 15.The Headmaster,
Government High School,
Palanivalasai, Chitrakottai Post,
Ramanathapuram District.
- 16.The Headmaster,
Government High School,
Kulathur, Ramanathapuram District.



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