



WP(MD) No.8286 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.8286 of 2024

and

WMP(MD)No.7476 of 2024

M.S.Sivapriya

.. Petitioner

Vs.

1. The Director of School Education,
Chennai.

2. The Chief Educational Officer,
Tanjavur District.

3. The District Educational Officer (Secondary),
Tanjavur,
Tanjavur District.

4. The Secretary,
Rajah's Higher Secondary School,
Tanjavur.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in Mu.Mu.No.



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8125/A3/A2/2019 dated 09.04.2021 and quash the same in so far as the petitioner is concerned and direct the respondents to sanction incentive increment for the higher qualification of M.Phil., to the petitioner from 2017.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.M.Sarangan,
Additional Government Pleader
for R1 to R3

ORDER

The petitioner filed this writ petition seeking to quash the impugned order passed by the 2nd respondent dated 09.04.2021 and to direct the respondents to sanction incentive increment for the higher qualification of M.Phil., to the petitioner from 2017.

2. Heard Mr.V.Panneer Selvam, learned counsel appearing for the petitioner and Mr.M.Sarangan, learned Additional Government Pleader appearing for the respondents 1 to 3.



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3. By consent of both parties, this writ petition is taken up for final hearing at the admission stage itself.

4. The petitioner, who was working as P.G. Assistant in the 4th respondent School has studied M.Phil degree and has made a claim for incentive increment. But vide impugned order in Mu.Mu.No.8125/A3/A2/2019 dated 09.04.2021, the second respondent has rejected the same. The reason for rejection is that the petitioner has not obtained prior permission and further no ratification can also be done for having failed to obtain the prior permission before proceeding to do the Course in any higher degree.

5. Mr.V.Panneer Selvam, learned counsel appearing for the petitioner submitted that in various earlier judicial pronouncements, this Court has considered and passed similar orders that the respondent authority shall not be pedantic in the matter of granting incentive increment due to the reason of not obtaining prior permission. Attention was brought to the judgment of this Court made in W.P.No.5041 of 2020 dated 30.11.2023. In the said judgment among several discussions, the following observation has also been made:



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“13. Time and again, it is held by this Court that the claim of teachers for incentive increment cannot be rejected on the ground that the teacher concerned had not obtained prior permission. Mr. Kavin Castro, learned counsel for the Petitioner relied on the orders passed in The Joint Director of School Education (Higher Secondary) and others Vs. S. Vasugi and another (W.A.(MD).No.1124 of 2023) dated 24.07.2023, in support of the above position. In the said order, it is held as under:

“3. This Court find that the issue is no more res integra in view of the several judgments on this issue holding that the claim of teachers for incentive increment cannot be rejected on the ground that the concerned teacher had not obtained prior permission of the authorities for undergoing higher education. Since the issue has been settled by precedents, this Court is unable to countenance the arguments advanced by the learned counsel for the appellants. It is true that there are several Government Order which have insisted the requirement of permission of the educational authorities for a teacher to undergo higher education. It is to be noted that the payment of incentive increment for acquiring higher qualification is to encourage the teachers to acquire higher qualification so that the quality of education will be higher. It may be true that the teacher while in service will have to obtain prior permission as per the Government Orders. Further it is to be noted that acquiring higher qualification while in service is not prohibited



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and it is only regulated. In such circumstances, acquiring higher qualification while in service without the permission is only an irregularity and that will not entitle the respondents to reject the benefit to the teachers.

14. But the Respondents without being aware of the legal position, had rejected the application seeking permission of the Petitioner which is arbitrary and unlawful.”

In view of the reasons stated above, this Writ Petition is allowed and the impugned order in A.T.M.U.N513/A3/2014 dated 24.09.2014 issued by the 4th Respondent and the consequential order dated 11.06.2019 in O.M.No. 2654/A5/2019 issued by the 4th Respondent are set aside and the fourth Respondent is directed consider the M.Phil degree obtained by the Petitioner, through part time mode as the degree through deemed permission and pass appropriate orders to accord her the attendant, monetary/service benefits for the same within a period of six weeks from the date of receipt of a copy of this order. No costs.”

6. However, in the instant case, the petitioner who is working in a private School is required to have obtained the previous permission from the Secretary. In fact, there is no quarrel made by the fourth respondent that prior permission has



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not been obtained from their end. In fact the claim for incentive increment has been forwarded through proper channel and the Headmaster from the said School and the Secretary have endorsed that prior permission has been granted. When the petitioner is working in a private School and when she falls under the immediate control of the School Committee headed by the Secretary, it is not unusual to get a prior permission from the Secretary of the School. In that case, it is unfair on the part of the second respondent to deny the benefit of incentive increment for want of prior permission.

7. Mr.M.Sarangan, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that as per G.O.Ms.No.944 Education (D2) Department dated 29.07.1989, prior permission has to be obtained and it has been made mandate in view of the subsequent judicial pronouncements made in W.A.No.570 of 2021 and CMP.No.2609 of 2021. But on perusal of the said order, it is seen that it is only an interim order and it has not dealt with the merits of the matter.



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8. In the instant case, the petitioner has obtained due permission from the fourth respondent and hence, there is no bar to grant the benefit of incentive increment to the petitioner. So, that case law is not applicable to the case on hand.

9. In fact prior permission to do any higher degree is to ensure that the employee does not divert his/her attention only towards their higher education by compromising their regular duties. Only for the said reason, whenever prior permission is granted, a condition will be imposed that the permission granted to the individual is without detrimental to their regular duties. If the higher qualification was obtained without making any compromise to the regular work and there is no complaint in this aspect as well, I do not even find any reason why subsequent ratification cannot be done. Admittedly, there is no department action pending against the petitioner during the relevant point of time when she was studying M.Phil degree on the ground that her attention was diverted more towards her higher studies and focussed less towards her work commitments. No Rule shall be read with, without understanding the very object and purpose of it. Rules and regulations are made for a better administration and in the best interest of the institution and the individuals. Hence, every effort should be taken to adopt



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a right balance while interpreting and applying the same to any fact situation.

Hence, I feel it appropriate to set aside the impugned order.

10. Accordingly, the order passed by the 2nd respondent vide his proceedings in Mu.Mu.No.8125/A3/A2/2019 dated 09.04.2021 is set aside and the second respondent is directed to consider the M.Phil degree obtained by the petitioner as a degree acquired after obtaining a deemed permission and pass appropriate orders to accord her the incentive increment within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, this writ petition is **disposed of**. No Costs.
Consequently, connected miscellaneous petition is closed.

01.04.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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R.N.MANJULA, J.

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