



W.P(MD)No.8084 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P(MD)No.8084 of 2022
and
W.M.P(MD)No.6044 of 2022

Sakthilatha

... Petitioner

Vs.

1.The Director of Elementary Education,
Office of Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006.

2.The District Educational Officer,
Tenkasi,
Tenkasi District.

3.The Block Educational Officer,
Kadayanallur,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the third respondent in Na.Ka.No.



W.P(MD)No.8084 of 2022

1214/A2/2021, dated 21.03.2022 and quash the same and pass such further or other orders as this Court.

For Petitioner : Mr.V.Sasi Kumar

For Respondents : Mr.J.K.Jeyaseelan
Government Advocate

ORDER

This writ petition has been filed to quash the order, dated 21.03.2022 passed by the third respondent.

2. The case of the petitioner is that the petitioner has been appointed as Secondary Grade Teacher on 06.01.1992 in Panchayat Union Primary School at Alagappapuram, Kadayam Union, Tenkasi District. The petitioner had been promoted as Headmistress on 18.06.2001 and she got Selection Grade for the post of Headmistress on 18.06.2011. In the year 1997, the petitioner got the degree of B.Lit., for which, she got incentive increment on 02.02.2001. The petitioner got second incentive increment for acquiring B.Ed., degree course. Though the entitlement of incentive increments were clarified in various proceedings that the Middle School Headmistress can be given the second incentive increment directed the third respondent herein that the petitioner had



W.P(MD)No.8084 of 2022

been promoted as Headmistress in pursuance to B.Lit., degree qualification, the petitioner got incentive increment while she had been working as Tamil Teacher and thereafter, on 13.07.2012, she obtained second incentive increment while she acquired the degree of B.Ed. It is further contended that as per the proceedings of the first respondent, dated 11.08.2016 in Na.Ka.No. 012605/E1/15, the persons who was appointed as Headmaster based on B.Lit., qualification subsequently acquired the degree of B.Ed., are not entitled to get incentive increment as per G.O(Ms)No.42, dated 10.06.1969, G.O(Ms)No.107, dated 20.01.1976 and G.O(Ms)No.1023 and directed the third respondent to rectify the defects. The third respondent by his proceedings, dated 21.03.2022 passed an order that the person, who is not having the degree of B.Ed., and promoted as Middle School Headmaster, when the Headmaster obtained the degree of B.Ed., after promoted as Headmaster of Middle School and further directed to refund the excess salary amount. Hence, the present writ petition.

3. The learned Counsel appearing for the petitioner submitted, in a similar / identical issue, the Hon'ble Division Bench of this Court in a batch of writ appeals in W.A(MD)Nos.2124 of 2023 etc., dated 20.12.2023 and the same is extracted hereunder and reads as follows:



W.P(MD)No.8084 of 2022

WEB COPY

"8. It is not in dispute that the writ petitioners have acquired the qualification only after their promotion to the post of Middle School Headmaster and therefore, the writ petitions are not entitled for incentive increments for the qualification acquired after becoming Middle School Headmasters. However, the excess payment if any made already need not be recovered from him, since there was no misrepresentation on the part of the writ petitioners. More so, such incentive increments were wrongly granted at the instance of the Director of Elementary Education or the Subordinate authorities by wrongly interpreting the Government Policy.

9. Thus, we are in agreement with the learned Single Judge regarding setting aside the recovery alone. However, it is made clear that the writ petitioners are not entitled for incentive increments for the qualification of B.Ed., degree. Accordingly, the re-fixation done by the competent authorities stands confirmed.

10. Accordingly, W.A.(MD)Nos.2124, 1526, 1527, 1819, 1820 of 2023 filed by the Writ Petitioners stand dismissed and the orders dated 18.08.2023, 02.06.2022, 02.06.2022, 23.09.2022, 23.09.2022 in W.P.(MD)Nos.428, 22272, 22271 of 2017, 4437, 3067 of 2022 stands confirmed. W.A.(MD) Nos.754 to 756 of 2018, 518, 519, 525, 529, 530 of 2020 filed by the



W.P.(MD)No.8084 of 2022

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State stand allowed and the order 21.03.2017, 21.03.2017, 21.03.2017, 18.09.2019, 18.09.2019, 18.09.2019, 17.09.2019, 17.09.2019 passed in W.P.(MD)Nos.428, 22272, 22271 of 2017, 4437, 3067 of 2022, 14427 to 14429 of 2013, 10464 to 10466, 13614, 13615 of 2017 are set aside. In respect of the Writ Appeal in W.A.(MD) No.1016 of 2022, since the request of the respondent for incentive increments for acquiring both B.Ed. and M.A. degrees, he is entitled to incentive increment only for acquiring M.A. degree as per G.O.Ms.No.42, Education Department, dated 10.01.1969, the Writ Appeal is partly allowed and W.P.(MD)No.24997 of 2018 is dismissed in respect of the incentive increment for acquiring B.Ed. qualification and allowed in respect of acquiring M.A. degree qualification."

4. The Hon'ble Division Bench of this Court has dismissed the writ appeals in respect of the incentive increment for acquiring B.Ed., qualification and also allowed in respect of acquiring M.A., degree qualification but the order of the learned Single Judge regarding setting aside the recovery stands confirmed.

5. The counter affidavit was filed by the second respondent on 20.06.2022. As per the counter affidavit filed by the second respondent, the relevant portion is reads as follows:



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"5. I respectfully submit that Government had accepted to give incentive payments and awards should be given to the teachers in schools who acquire higher educational qualifications. In consonance with the decision the Government had issued G.O(Ms)No.42 Education Department, dated 10.01.1969. It introduced Fourth Five Year Plan in the scheme for Incentive Payments and awards to teachers during 1968 - 1969 sanctioned. The expenditure should charge to '28 Education Z development schemes - Schemes in Fourth Five Year Plan - Miscellaneous - O - Incentive Payment and awards to teachers'. The said scheme accorded concurrence from the Finance Department vide its U.O.No.410/PIX/69 - 1, dated 07.01.1969.

6. I respectfully submit that G.O(Ms)No.42 prescribed which degree should be treated as higher qualification for acquiring incentive increments. Every teacher either Government School teacher and Government aided School teachers were treating them as equal in the case of higher studies sanction and eligible two advance increments during tenure. As per Section 51 of the Tamil Nadu Recognized Private Schools (Regulation) Act states that the government has power to delegate to carry out any functions of the government to any authority except rule making authority."



W.P(MD)No.8084 of 2022

WEB COPY

6. Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the official respondents and perused the materials available on record.

7. In view of the above judgment passed by the Hon'ble Division Bench of this Court stated *supra*, the order passed by the third respondent in Na.Ka.No.1214/A2/2021, dated 21.03.2022 is liable to be quashed and accordingly, the same is quashed.

8. In the result, the writ petition stands allowed with the above observations and directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



W.P(MD)No.8084 of 2022

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W.P(MD)No.8084 of 2022

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