



W.A(MD)Nos.693 & 1174 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.01.2024

PRONOUNCED ON : 23.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.A(MD)Nos.693 & 1174 of 2020
and
C.M.P(MD)No.4141 of 2020**

1.W.A(MD)No.693 of 2020:

R.Jeya Ganesh

... Appellant/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,
Virudhunagar, Virudhunagar District.
- 3.The District Educational Officer,
Virudhunagar, Virudhunagar District.
- 4.The Secretary,
Nadar Mahamai Higher Secondary School,
Elayirampennai,
Sattur Via,
Virudhunagar District.

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5.The Headmaster,
Nadar Mahamai Higher Secondary School,
Elayirampennai,
Sattur Via,
Virudhunagar District.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.03.2020 passed in W.P(MD)No.20423 of 2015 on the file of this Court.

For Appellant : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondent Nos.1 to 3 : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent Nos.4 & 5 : No appearance

2.W.A(MD)No.1174 of 2020:

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,
Virudhunagar,
Virudhunagar District.

3.The District Educational Officer,
Virudhunagar,
Virudhunagar District. ... Appellants/Respondents 1 to 3

vs.



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1.R.Jeya Ganesh

... 1st Respondent/Writ Petitioner

2.The Secretary,
Nadar Mahamai Higher Secondary School,
Elayirampannai,
Sattur Via,
Virudhunagar District.

3.The Headmaster,
Nadar Mahamai Higher Secondary School,
Elayirampannai,
Sattur Via,
Virudhunagar District.

... Respondents 2 & 3/Respondents 4 & 5

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 09.03.2020 passed in W.P(MD)No.20423 of 2015 on the file of this Court.

For Appellants

: Mr.D.Sadiq Raja
Additional Government Pleader

For Respondent No.1

: Mr.J.Poovendhra Rajan

For Respondent Nos.2 & 3

: No appearance

COMMON JUDGMENT

(Judgment of the Court was made by D. KRISHNAKUMAR, J.)

For the sake of convenience, the parties herein are referred in the rank as specified in the Writ Petition in W.P(MD)No.20423 of 2015.



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2.Assailing the order, dated 09.07.2019 passed by the learned Single Judge in W.P(MD)No.13981 of 2015, the writ petitioner has preferred W.A(MD)No.693 of 2020 as well as the Department has preferred W.A(MD)No.1174 of 2020.

3.Since the issues involved in the Writ Appeals are one and the same, they are taken up together and are being disposed of, by this common order.

4.Brief facts leading to the filing of the Writ Appeals are as follows:

The petitioner was initially appointed as B.T Assistant (Science) in the fourth respondent School, which is a private School governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and his appointment was also duly approved by the third respondent. Though the fifth respondent was contemplating to fill up the post of P.G Assistant (Botany) by way of direct recruitment quite contrary to the Rules governing the service conditions of the petitioner, he was constrained to file a Writ Petition in W.P(MD)No.11693 of 2014 and this Court by an interim order



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restrained the fifth respondent from filling up the post. However, during the pendency of the Writ Petition, the fourth respondent promoted the petitioner as P.G Assistant (Botany) and the same was duly approved by the third respondent. For the purpose of studying M.Sc and M.Phil Degrees, the petitioner sought for prior permission and the same was duly reported to the fourth respondent and the respondents 4 and 5 have also endorsed the same. As a matter of fact, the petitioner had sought for prior permission on 21.11.2009 to study M.Sc (Botany) and the fifth respondent made an entry in the petitioner's SR to the effect that prior permission was granted to study M.Sc (Botany). As far as M.Phil is concerned, the petitioner submitted a request to the respondents 4 and 5 on 20.09.2012 and they have also endorsed his application. Thus, the petitioner was given permission for studying M.Sc and M.Phil. Based on the said request made by the petitioner seeking incentive increment for having obtained M.Sc (Botany) and M.Phil Degrees, the fifth respondent sent a proposal to the third respondent, however, the third respondent vide impugned proceedings dated Nil 7, 2015 has rejected to sanction incentive increment on the ground that the petitioner studied M.Sc (Botany) and M.Phil without prior permission. Challenging the same, the petitioner has preferred the Writ Petition in W.P(MD)No.20423 of 2015.



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5.The learned Single Judge by order dated 09.03.2010, partly allowed the Writ Petition and the relevant portion of the same is as follows:

'4. It is seen from the typed set of papers that on 21.11.2009, the petitioner sent a letter to the 4th respondent seeking permission to study M.Sc., (Botany) and the same has been signed by the Secretary on 28.11.2009. Immediately, on sending a proposal itself through the Secretary has given a permission and then, on 31.12.2012 the same has been recorded in Service Register that he has completed M.Sc.,(Botany) Course. Regarding M.Phil., he sought permission for studying in part time in Jamal Mohammed College (Autonomous) at Trichy during 2012-2014 on 20.09.2012 without getting M.Sc., degree on hand, he says that he passed M.Sc., (Botany) on 2011. The Headmaster signed in the said papers for ratification on 10.07.2015, for which, he completed M.Phil., degree in the year 2013-2014. When the said application was un-dated, the ratification letter signed on 10.07.2015 by the Headmaster, could not be accepted by this Court. Whereas, there is no permission granted by the Secretary of the said school, the said fact cannot be accepted and the question of granting incentive is considered only for M.Sc., (Botany).

5. The learned counsel appearing for the petitioner repeatedly argued that the petitioner has already given an application, it is the Headmaster's duty to forward, but, he has not disclosed the facts. It is to be pointed out that the petitioner has obtained permission for M.Sc., degree through Distance



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Education, but, in the letter for seeking permission to study M.Phil, there is no date at all and also signed in Tamil. Further, the said M.Phil, Course is a part time course and not a distance education. It is also stated in the said requisition form that he is studying the M.Phil., Course only for improving the knowledge, however, the learned counsel is not in a position to state how it is related to improve the said school students, after obtaining such degree.

6. In the case on hand, it has been pointed out by the learned counsel appearing for the petitioner himself that permission granted only for studying M.Sc., and not for M.Phil., In the said circumstances, when he got permission only to study M.Sc., for that alone, incentive can be granted, and not for studying M.Phil., To that extent alone the relief sought for by the petitioner can be granted. The respondents are hereby directed to sanction incentive only for the degree obtained for passing M.Sc., (Botany) as per the procedure followed.

7. Accordingly, this Writ petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.'

6. Aggrieved over the disallowed portion of the order passed by the learned Single Judge, the petitioner has filed W.A(MD)No.693 of 2020 and aggrieved over the allowed portion of the order passed by the learned Single Judge, the Department has filed W.A(MD)No.1174 of 2020.



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7.The learned counsel appearing for the writ petitioner would submit that the petitioner is entitled for incentive increment for having acquired M.Phil degree. The petitioner gave his request in writing to the respondents 4 and 5 and the same was duly endorsed by him and as such, the impugned order declining to grant incentive increment to the petitioner on the ground that he did not obtain prior permission is contrary to the facts. As far as M.Phil degree is concerned, the petitioner submitted a request to the respondents 4 and 5 on 20.09.2012 and they have also endorsed his application. Thus, the petitioner was given permission for studying M.Phil Degree. The competent authority to give permission is only the fifth respondent to whom the petitioner has to give a request and accordingly, the petitioner gave his request. Upon his request, the fifth respondent gave such permission. Though the order of permission granted by the Headmaster of the School does not contain as to on which date permission was granted, the same will not vitiate the entire proceedings. It is for the sanctioning authority to put the date and mere non-mentioning of the date *ipso facto* would not render the order invalid. The incentive increment is being granted for the part time courses as well. When the petitioner improved his knowledge, it will always be helpful to the students and



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as such the very purpose of granting incentive increment should be taken into consideration. Therefore, the order of the learned Single Judge is liable to be set aside.

8.The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that though the Secretary is the authority to accord prior permission to study higher courses for Teachers in aided Schools, the District Educational Officer has to approve the same and then, it has to be recorded in the Service Book of the individual. Till then, the Teachers cannot claim any incentive increment for their higher studies. The powers delegated to the District Educational Officer in G.O.Ms.No.101 (School Education Budget-1) dated 18.05.2018, is to approve the permission given by the Secretaries of the Schools for studying higher courses in respect of Teachers in aided Schools. The fifth respondent is not the competent authority to accord prior permission for studying higher courses, as he is only the Headmaster of the School. The competent authority to grant prior permission to the Teachers in aided Schools for studying research courses on part time basis is the Head of the Department ie., the Director of School Education as per G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 and G.O.Ms.No.328, Personnel and



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Administrative Reforms Department, dated 09.04.1983 and as per Government Letter (1D) No.356, School Education, dated 02.11.2007.

9.The Government in Letter No.23339/Pa.Ka.(2)/2016-4, dated 15.12.2017 has clarified that the Headmasters and P.G Teachers should obtain prior permission from the Head of Department ie., the Director of School Education, to avoid ratification as was done in many cases. Further, necessary disciplinary action should be taken against the incumbents studying part time courses on M.Phil/Ph.D Degrees without obtaining prior permission. It was strictly instructed that no such ratification will be given in future. The petitioner has studied part time course in M.Phil in Jamal Mohammad College (Autonomous) at Trichy during the year 2012-2014, without getting prior permission from the competent authority.

10.The learned Additional Government Pleader appearing for the respondents 1 to 3 would further submit that prior permission accorded by the Secretary of the School in respect of M.Sc degree becomes valid only after it is approved by the grant releasing authority ie., the District Educational Officer. The competent authority to accord prior permission for higher research studies like M.Phil/Ph.D either part time or full time is the

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11.It is an admitted fact that the petitioner was initially appointed as B.T Assistant (Science) in the fourth respondent School and his appointment was duly approved by the third respondent. For studying higher courses, necessary permission should be obtained from the competent authority as per G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989 and G.O.Ms.No.328, Personnel and Administrative Reforms Department, dated 09.04.1983 and as per Government Letter (1D) No.356, School Education, dated 02.11.2007. When that being the case, the petitioner has not followed the instructions granted in the aforesaid Government Orders. The petitioner being a P.G Assistant has studied M.Phil through distance education as part time course in Jamal Mohammad College (Autonomous) at Trichy, without any such authorization and violated the above Government Orders.



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12.The Government also issued a clarification by letter, dated 15.12.2017 that the Headmasters and P.G Teachers should obtain prior permission from the Head of the Department ie., the Director of School Education, to avoid ratification as was done in many cases, failing which, necessary disciplinary actions would be taken in future. The said order was passed in the year 2017. The petitioner has submitted a letter dated 10.08.2012 to the fourth respondent seeking permission to study M.Phil course and subsequently, on 12.08.2012, the Secretary of the School has also forwarded the same to the District Educational Officer, Virudhunagar and the Service Register of the petitioner also reveals that he studied M.Phil as a part time course and the same has also been entered in the Service Register by the Secretary of the School. These communications have been placed before this Court in the Writ Appeal, but there is no material with regard to receipt of the same by the Department. On 07.09.2020, a letter was also given by the Headmaster of the School that the petitioner has studied part time course in the year 2012-2014 without affecting the regular classes of the School.

13.Considering the factual aspect that the petitioner has completed M.Phil during the period 2012-2014, he has also made an

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application before the authority concerned and there is no acknowledgment proof to show that the said application was received by the Department, in such circumstances, the authority concerned shall consider the proposal submitted by the School for granting incentive increments, if the said records produced before this Court is genuine and the same was received by the authority concerned and also to consider for granting ratification on the studies of M.Phil course during the said period. Since the petitioner being P.G Assistant, he has to strictly follow the instructions of the Department. Now, several Teachers have got the benefit of such increment prior to the circular issued by the Department in the year 2007 and ratification also passed by the Department.

14. Accordingly, the order, dated 09.03.2020 passed in W.P(MD)No.20423 of 2015 by the learned Single Judge is set aside insofar as it relates to M.Phil Degree is concerned and **W.A(MD)No.693 of 2020 is allowed** and the matter is remanded back to the authority concerned for fresh consideration and the same has to be considered in accordance with law by verifying the records of the petitioner and to re-consider for ratification based on the proposal submitted by the School and the Service Register issued by the Headmaster of School. If they are satisfied that the



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aforesaid facts are bonafide and genuine, the authority concerned shall consider for ratification and pass appropriate orders as expeditiously as possible.

15.With regard to M.Sc (Botany) Degree, the order, dated 09.03.2020 passed in W.P(MD)No.20423 of 2015 by the learned Single Judge is confirmed and **W.A(MD)No.1174 of 2020 is dismissed.**

No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [R.V.,J.]
23.02.2024

NCC : Yes / No
Index : Yes / No
ps



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To

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O/o.The Director of School Education,
DPI Compound,
College Road,
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- 2.The Chief Educational Officer,
Office of the Chief Educational Office,
Virudhunagar,
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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.A(MD)Nos.693 & 1174 of 2020

DATED : 23.02.2024