



W.P.(MD).No.13440 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.06.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.13440 of 2024

and

W.M.P.(MD).Nos.11852 and 11854 of 2024

1.F.Judes Frederick Selvan

2.S.Stalin

3.George Sunil Kumar

4.E.Kala

...Petitioners

Vs

1.The State of Tamil Nadu,
Represented by its Secretary,
School Education Department,
St.George Fort, Chennai – 600 009.

2.The State of Tamil Nadu,
Represented by its Secretary,
Human Resources Management (FR-IV) Department,
(Personnel and Administrative Reform) (FR-IV) Department,
St.George Fort, Chennai – 600 009.

3.The Director,
School Education Department (Higher Secondary),
D.P.I.Campus, College Road,
Chennai – 600 006.



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4.The Joint Director,
School Education Department (Higher Secondary),
D.P.I.Campus, College Road,
Chennai – 600 006.

5.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Government Order in G.O.(Ms)No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023, issued by the second respondent herein and quash the same as illegal and consequently direct the respondents herein to sanction and disburse two advance increment for acquiring higher Educational Qualification based on G.O.(Ms)No.177 School Education 5(2) Department dated 13.10.2016, G.O.(Ms)No.107 School Education Department dated 20.01.1976, G.O.(Ms)No.102 Science Education and Technology Department dated 09.02.1993, G.O.(Ms)No.37, Personal and Administrative Reforms (FR-IV) Department dated 10.03.2020 and G.O. (Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, within a stipulated time fixed by this Court.

For Petitioners : Mr.C.Kishore

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.M.Siddharthan
Additional Government Pleader



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ORDER

When the matter came up for hearing on 26.06.2024, this Court passed the following order:

“The learned counsel for the petitioner has made an endorsement stating that the writ petition is not pressed as against petitioners 2 to 4 with a liberty to file a fresh writ petition on the same cause of action.

2. In view of the same, liberty is granted to the petitioners 2 to 4 to file a separate writ petition on the same cause of action.

3. Mr.M.Siddharthan, learned Additional Government Pleader takes notice on behalf of the respondents.

4. At request of both side counsels to produce the orders passed by this Court in W.P.(MD)No.683 of 2024, dated 29.01.2024 and the order if any passed in W.A.(MD)No.975 of 2024 in this regard.

5. Post the matter on 27.06.2024.”

2. On 26.06.2024, this Court already granted liberty to the petitioners 2 to 4 to file a separate writ petition and accordingly, this writ petition is liable to be dismissed as against them.



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3. Insofar as the first petitioner is concerned, he has sought for a relief in respect of G.O.(Ms.)No.95 Human Resources Management (FR-IV) Department, dated 26.10.2023 and to declare the same as illegal, specifically the paragraphs Nos.7 and 8 of the above Government Order which had been already upheld in earlier Writ Petition filed for the same relief in W.P.(MD).No.1605 of 2024 and batch. The learned Single Judge has held ultimately that there is no illegality in G.O.(Ms)No.95 Human Resources Management (FR-IV) Department, dated 26.10.2023.

4. Even though the entire G.O.(Ms).No.95 dated 26.10.2023 is challenged, the crux of his argument revolves around only on paragraph No.7 which was already the subject matter of the earlier batch of Writ Petitions of the Co-ordinate Bench. So, this Court is not inclined to deal with the validity of G.O.(Ms)No.95 dated 26.10.2023 once again. If the first petitioner is still aggrieved, he can seek permission of the Court and file a Writ Appeal challenging the orders passed in W.P.(MD)No.1605 of 2024 batch. However, the further arguments that even without touching upon G.O.(Ms)No.95 dated 26.10.2023, the petitioner is entitled to get his relief in terms of G.O.(Ms)No.37 Personal



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and Administrative Reforms (FR-IV) Department dated 10.03.2020, is a matter to be considered. Admittedly, G.O.(Ms)No.37 dated 10.03.2020 has got reservation under Clause 6 (vi).

5. In fact, the very same issue came for consideration in the earlier Writ Appeal in W.A.(MD)No.975 of 2024 dated 12.06.2024, where the Division Bench of this Court has held as under:

“5. Heard the learned Additional Government Pleader appearing for the appellants and perused the materials available on record.

6. The Government in order to encourage the Teachers to acquire themselves with higher qualifications, so that the students would get benefited, issued Government Order providing incentive increments to the Teachers, who acquired higher qualification, of-course, after getting necessary permission from the authorities. Wherever Teachers had acquired higher qualification, in all such cases, the Government had provided incentive increments, as per the scheme introduced by the Government. Later, there had been several litigations in respect of payment of incentive increment and by orders passed by the Court, it was settled that a Teacher, whoever acquires the higher qualification, will only be entitled for two incentive



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increments in their career, even though they acquired further higher qualification.

7. Later, the Government took a policy decision to cancel the scheme of incentive increment and had issued G.O.(Ms)No.37, dated 10.03.2020, cancelling the scheme of sanctioning of advance increment in all the departments. In view of G.O.(Ms)No.37, the grant of advance increment for acquiring higher qualification has been dispensed with, but, however, the issue in respect of Teachers, who had acquired higher qualification prior to the issuance of G.O. (Ms)No.37, dated 10.03.2020, has been dealt with in Clause-6(vi) of the Government Order, which is extracted hereunder for ease reference:

“6....

I....

VI.The case of Government servants who have

acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance

increment may be sanctioned by the administrative

department concerned after obtaining concurrence of



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Finance department. If no previous order was

issued by any of the department concerned, they they

are not eligible for sanction of any advance

increments for passing higher qualification

irrespective of the post held/degrees acquired."

8. It is the contention of the learned Additional Government Pleader that in view of Clause 6(vi), which says that if no previous order was issued by any of the department concerned, then they are not eligible for any advance increment, will mean that only in cases, where an order has been passed for awarding incentive increment prior to the Government Order, they are entitled for the same and in cases, where, such orders has not been passed, they are not entitled. The argument is liable to the outrightly rejected for the simple reason that G.O.(Ms)No. 37, even though had been issued cancelling the scheme of advance increment, by incorporating Clause 6(vi) in the Government order, wherever, the Teachers, who had acquired higher qualification, of-course, after obtaining necessary permission, had acquired such qualification, prior to the issuance of Government Order, are entitled for the award of incentive increment.

9. G.O(Ms)No.37 does not operate retrospectively and the purposive interpretation of Clause 6(vi) in the



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Government Order can only be that the Teachers, who had all acquired the higher qualification prior to the issuance of the Government Order and if otherwise qualified are eligible for sanction of the incentive increment. If the interpretation made by the learned Additional Government Pleader is to be accepted, then the very object of the inclusion of clause 6(vi) in the Government Order becomes redundant. As such, we have no hesitation to hold that the Teachers, who, after obtaining necessary permission from the authorities, had acquired higher qualification, ie., wherever the degrees had been awarded prior to issuance of G.O.(Ms)No.37, dated 10.03.2020, are entitled for advance increment for the higher qualification, if it is within the limit of two incentive increments in their career.

6. Since the first petitioner has also raised a similar relief and his application for getting the incentive increment for higher qualification was pending even before G.O.(Ms)No.37 dated 10.03.2020 came into being, the first petitioner is entitled to the benefit of Clause 6(vi) of the G.O.(Ms)No.37 dated 10.03.2020.

7. In view of the above stated reasons, this Writ Petition is **partly allowed** by granting a direction alone to the respondents to



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consider the first petitioner's application for claiming incentive increment in the light of G.O.Ms.No.37 dated 10.03.2020 especially under Clause 6(vi) and also in the line of the observation made in W.A.(MD)No.975 of 2024 dated 12.06.2024 and pass orders within a period of four weeks from the date of receipt of a copy of this order. Insofar as the petitioners 2 to 4 are concerned, this writ petition is dismissed with liberty as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

27.06.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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R.N.MANJULA, J.

Nsr

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