



W.P.(MD) No.11830 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.11830 of 2021

&

W.M.P.(MD).No.9290 of 2021

S.Chitra Gnanamalar

... Petitioner

Vs.

1.The Director of School Educational Department
DPI Compound
College Road
Chennai

2.The Chief Educational Officer
Tirunelveli

3.The District Educational Officer
Cheranmahadevi
Tirunelveli

4.The Headmaster
Government Higher Secondary School
Pallakkal Podhukudi
Tirunelveli

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records from the office of the 4th respondent pertaining to the impugned order in Na.KA.No.52/2021 dated 05.05.2021 and quash the same and further direct the 4th respondent to pay the incentive increment from the month of May 2021.

For Petitioner : Mr.P.P.Alwin Balan

For Respondents : Mr.V.Om Prakash,
Government Advocate

ORDER

The petitioner herein was appointed as B.T.Assistant(English) on 01.07.2004 at Government High School, Vembur, Tuticorin District and subsequently transferred to Government Higher Secondary School, Pallakkal Podhukudi and thereafter she sought permission from the Headmaster, Government High School, Vembur for purusing M.Phil (English) course and the same was granted by the Headmaster concerned through proceedings Na.Ka.No.276/2006 dated 09.08.2006 and the same was entered in the service register of the petitioner. Subsequently, the petitioner completed the M.Phil (English) course in the mother of September, 2008 and accordingly the same was intimated to the 4th respondent and an entry was also made in



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the service register on 30.01.2009. Thereafter, pursuant to G.O.(1D) No.18, dated 18.01.2013, School Education (E2) department, the petitioner was awarded incentive increment on acquiring the M.Phil (English) qualification from the year 2013 onwards. Whiles, the said incentive increment was stopped by issuing a impugned proceeding dated 05.05.2021 on the ground that an audit objection was raised against awarding of such incentive increment in favour of the petitioner on the ground that the petitioner failed to obtain prior permission from the Head of the Department for pursuing the M.Phil (English) course. Aggrieved by the said impugned proceeding dated 05.05.2021, the present Writ Petition has been filed.

2. When the matter is taken up for consideration, it is brought to the notice of this Court by the learned counsel for the petitioner that the very same issue has fallen for consideration before a learned Single Judge of this Court in W.P.(MD)Nos.8907 of 2021 and batch and this Court by order dated 03.11.2023 allowed all the Writ Petitions by holding that the petitioners therein cannot be denied of incentive increment on the ground of not obtaining prior permission from the Head of the Department. The learned



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Judge has also taken into consideration the order passed by this Court in W.P. (MD).No.4019 of 2018 as well as order in W.P.(MD) No.7138 of 2023 dated 28.07.2023, wherein the similar issue was fallen for consideration and allowed the Writ Petitions. Paragraph 10 of the said order reads as under:

“ 10.Even in the instant case, the respondents have fairly conceded in the counter stating that the petitioners have acquired the higher qualification before 10.03.2020 i.e., before the date of G.O.Ms.No. 37, Personal and Administrative Reforms Department. Since the said G.O., cannot operate retrospectively and since this Court has decided time and again in favour of the petitioners seeking incentive increment for acquiring higher qualification without getting prior permission from the authorities adopting the order discussed supra, I have no hesitation to hold that all the four writ petitioners are entitled to incentive increment for the higher qualification acquired by them. ”

3. However, it is contended by the learned Government Advocate appearing for the respondents that in terms of G.O.Ms.No.328, Personnel and Administrative Reforms (Personnel.A) Department dated 09.04.1983, the petitioner is under obligation to obtain prior permission from the Head of the



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Department i.e., the Director of School Education, but the petitioner has obtained prior permission only from the Headmaster from the concerned School is not valid in terms of G.O.Ms.No.328, Personnel and Administrative Reforms (Personnel.A) Department dated 09.04.1983. He also further contended that the G.O.Ms.No.328, Personnel and Administrative Reforms (Personnel.A) Department dated 09.04.1983 was not considered by the learned Single Judge in the above referred cases.

4. This Court has considered the said submission. No doubt, there was no reference to G.O.MS.No.328, Personnel and Administrative Reforms (Personnel.A) Department dated 09.04.1983 in the order passed by this Court as noted above. But the very same principle was considered by the learned Single Judge and Writ Petitions were allowed. Mere non consideration of G.O.Ms.No.328, Personnel and Administrative Reforms (Personnel.A) Department dated 09.04.1983 does not make any much difference as this Court has dealt with the very same aspect in the said orders. This Court having thoroughly gone through the said order passed by this Court does not see any reason to deviate from the view taken by the learned Judge in the



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above orders.

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5. In the light of the above, this Court is of the considered view the impugned order is wholly unsustainable and the same is accordingly set aside and the Writ Petition is allowed by duly following the order in W.P.(MD)Nos. 8907 of 2021 and batch dated 03.11.2023. Consequent upon setting aside of the impugned order, the benefits for which the petitioner may be entitled to shall be released as expeditiously as possible within a period of three months from the date of receipt of a copy of this order. Registry is directed to enclose the copy of the order passed in W.P.(MD)Nos.8907 of 2021 and batch dated 03.11.2023 to this order.

19.03.2024

NCC : Yes/No

Index : Yes/No

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MUMMINENI SUDHEER KUMAR, J.

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