



W.A.(MD)No.1052 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.06.2024

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THE HON'BLE MR.JUSTICE **R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN****

**W.A(MD)No.1052 of 2024
and
C.M.P.(MD)No.7749 of 2024**

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Nungambakkam,
Chennai-600 006.
- 3.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai -600 006.
- 4.The Chief Educational Officer,
Thanjavur, Thanjavur District.
- 5.The District Educational Officer,
Pattukottai, Thanjavur District.
- 6.The Assistant Elementary Educational Officer,
Peravurani @ Avanam,
Thanjavur District.



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7.The Inspector of Police,
Department of Vigilance and Anti Corruption,
Thanjavur. ... Appellants

vs

1.A.Govindasamy
2.Ravichandran
3.Prabakaran
4.Venkatesh
5.Ganesan ...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 11.03.2024 passed in W.P(MD)No.19093 of 2020.

For Appellants : Mr.S.Shaji Bino
Special Government Pleader

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This Writ Appeal is directed against the order, dated 11.03.2024 in W.P.(MD)No.19093 of 2020, wherein, the Writ Court had allowed the claim of the Writ Petitioner for granting second incentive increment.



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2.The first respondent/Writ Petitioner, while he was working as Headmaster in Panchayat Union Primary School, Eechanviduthi, Tanjore District, on having acquired the additional qualification in M.A.(Tamil) after getting prior permission from the authorities concerned, had requested for grant of second incentive increment, which was considered by the appellants and granted vide proceedings, dated 19.12.2019, by awarding the second incentive increment of Rs.740/- with effect from 01.07.2017. However, since the order granting the second incentive increment was not given effect, the first respondent/Writ Petitioner had approached the Writ Court for granting of the second incentive increment. The appellants, by relying on G.O.(Ms)No.37, dated 10.03.2020, and the further clarification order issued in G.O.(Ms)No.95, dated 26.10.2023, defended that the benefits cannot be extended. However, the learned Judge, by impugned order, had allowed the claim of the Writ Petitioner for granting second incentive increment, which is challenged by the appellants in this Writ Appeal.

3.Mr.S.Shaji Bino, learned Special Government Pleader appearing for the appellants argued that even though Teachers were granted incentive



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increment in scheme of the Government, but, subsequently, the incentive increment scheme was cancelled by issuing a Government Order in G.O. (Ms)No.37, dated 10.03.2020 and also, a further clarification has been issued in G.O.(Ms)No.95, dated 26.10.2023 and in view of these Government Orders, the Writ Petitioner is not entitled for grant of incentive increment, as directed by the Writ Court and is only entitled for a lumpsum payment, as contained in the orders issued by the Government. The learned Special Government Pleader further contended that when the scheme itself had been cancelled by G.O.(Ms)No.37, with effect from 10.03.2020, the impugned order of the learned Judge granting incentive increment by holding that the further clarification in G.O(Ms)No.95, will not be applicable to the Writ Petitioner, is erroneous and unsustainable.

4.It is the further submission of the learned Special Government Pleader that even though the claim of the Writ Petitioner for granting second incentive increment was considered and granted vide proceedings, dated 19.12.2019, since the same has not been given effect to and in the meantime, as the entire scheme itself has been cancelled and further in view of the clarificatory order, the Writ Petitioner, at the best, would be entitled



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for grant of lumpsum payment and therefore, sought for interference of this Court by allowing the Writ Appeal.

5.Heard the learned Special Government Pleader and perused the materials available on record.

6.The first respondent/Writ Petitioner, who had been working as Headmaster, Panchayat Union Primary School in Peravoorani, Tanjore District, had acquired the additional qualification in M.A.(Tamil) in the month of September 2017, by getting prior permission from the authorities concerned and the application made by him for granting second incentive increment was also duly considered and the appellants, by proceedings in Na.Ka.No.509/A1/2019, dated 19.12.2019, had awarded the second incentive increment of Rs.740/- with effect from 01.07.2017 and his pay was also, accordingly, fixed. But however, the order, dated 19.12.2019 granting second incentive increment was not given effect to and the first respondent had alleged that in view of certain illegal demands, the implementation of the order was simply postponed.



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7.Be that as it may, in the meantime, the Government issued G.O.(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020, withdrawing and cancelling the incentive increment scheme. However, Clause-6(vi) of G.O.(Ms)No.37, protects the Teachers, who had already acquired the qualification prior to the issuance of the Government Order by the cancellation of the scheme and they are entitled for the award of incentive increment. Clause 6(vi) is extracted hereunder for easy 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 Finance department. If no previous orders were 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.The Government had again issued G.O(Ms)No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023, whereby, certain clarifications were issued to G.O.(Ms)No.37, dated 10.03.2020, to



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the effect that wherever the benefits of the incentive increment had not been granted, the concerned employee will only be entitled to a lumpsum payment. Para 7 of the said Government Order is extracted hereunder for easy reference:

“7.Now, it has come to the notice of the Government that substantial number of claims are pending from candidates with higher educational qualifications. Hence, to expeditiously process and bring clarity to the scheme of granting incentive, in partial modification of the orders issued in the Government Order second and third read above and clarifications issued in the Government Letter fourth read above, the cut-off-date for sanction of advance increments for having acquired higher educational qualifications ended and the new scheme of sanction of lumpsum amount is ordered to take effect from 10.03.2020. Thus, the clarification issued in Government Order second read above and the Government Letter fourth read above are harmonized to ensure that, all pending applications as on 10.03.2020 and claims made subsequently for sanction of benefits for having acquired higher educational qualifications shall be disposed as per this new scheme of granting lumpsum incentives only and not the earlier scheme of granting increments in salary. This principle would ensure expeditious disposal of all pending claims, and also maintain parity and equal treatment between the claims pending as on date and for the persons acquiring higher educational qualifications in future also”

9.Only on the strength of the clarificatory order issued in G.O. (Ms)No.95, the learned Special Government Pleader vehemently contended that the Writ Petitioner would only be entitled for the lumpsum payment and the Writ Petitioner is not entitled to receive the incentive increment, as



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claimed by him.

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10. We had an occasion to deal with the similar kind of issue in respect of granting incentive increment for the persons, who had acquired additional qualification prior to issuance of G.O.(Ms)No.37, in W.A.(MD)No.975 of 2024, dated 12.06.2024 and held as follows:

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

11. Therefore, already we have held that all the persons, who had been acquired additional qualification prior to issuance of G.O.(Ms)No.37, if it is within two incentive increment, they are entitled for grant of incentive increment. Further, the clarification issued in G.O.(Ms)No.95, had been



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dealt with by the learned Judge and having found that G.O.(Ms)No.37 cannot operate retrospectively, the benefits granted under the incentive scheme prior to the Government Order, cannot be taken back and therefore, the similarly placed persons cannot be discriminated and treated unequally. As, already it has been decided that G.O.(Ms)No.37, does not have a retrospective effect and the employees, who had acquired additional qualification prior to issuance of G.O.(Ms)No.37, are entitled for the grant of incentive increment, the clarificatory order issued in G.O.(Ms)No.95, can in no way affect the rights of the concerned persons, who had acquired additional qualification and the right accrued on them cannot be tinkered with or taken away and the benefits cannot be denied through this clarificatory order.

12.In the instant case, the Writ Petitioner has, admittedly, acquired additional qualification by getting proper permission prior to issuance of G.O.(Ms)No.37 and it is his second incentive increment and in fact, the same also had been considered and granted by the appellants by proceedings, dated 19.12.2019 with effect from 01.07.2017. Hence, the argument of the appellants that in view of the clarificatory order, the Writ



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Petitioner is not entitled for the incentive increment, cannot be sustained and accordingly, rejected. The learned Judge, had rightly, arrived at a conclusion that the Writ Petitioner is entitled for the grant of second incentive increment and the same cannot be denied in view of G.O.(Ms)No. 37 and G.O.(Ms)No.95, which needs no interference and accordingly, sustained.

13.Resultantly, the Writ Appeal stands dismissed. However, there shall be no order as to costs.

**[R.S.K., J] & [G.A.M., J]
21.06.2024**

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