



W.P.(MD)Nos.16298 and 16299 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.16298 and 16299 of 2024

and

W.M.P.(MD)Nos.14161, 14163, 14197 and 14200 of 2024

**Lilly Athisaya Mary
Mary Jasline Suba**

**... Petitioner in W.P.(MD)No.16298/2024
... Petitioner in W.P.(MD)No.16299/2024**

Vs.

**1.The Government of Tamil Nadu,
Rep.by its Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai-9.**

**2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai-6.**

**3.The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Thoothukudi.**

**4.The Block Educational Officer,
The Office of the Block Educational Officer,
Sathankulam-628 704,
Thoothukudi District.**

**5.The Correspondent,
R.C.Primary School,
Periyathalai-628 703,
Thoothukudi District.**

... Respondents in both petitions



W.P.(MD)No.16298 and 16299 of 2024

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings dated 09.10.2020 in Na.Ka.No.572/AA1/2020 on the file of the fourth respondent and quash the same, directing the respondents to continue the disbursal of the already allowed incentive increments for higher education of the petitioners Mrs.Lilly Athisaya Mary and Mrs.Mary Jasline Suba, R.C.Primary School, Periyathalai-628 703, Thoothukudi District.

In both petitions:

For Petitioner	: Mr.S.Savarimuthu M/s.Father Xavier Associates
For R1 to R4	: Mr.T.Amjadkhan Government Advocate

COMMON ORDER

Heard Mr.S.Savarimuthu, learned counsel for the petitioners and Mr.T.Amjadkhan, learned Government Advocate for the respondents 1 to 4 in both petitions.

2.By consent of both parties, these writ petitions are taken up for final disposal at the stage of admission itself.

3.These writ petitions have been filed challenging the order of the fourth respondent dated 09.10.2020 in Na.Ka.No.572/AA1/2020 as illegal and



W.P.(MD)No.16298 and 16299 of 2024

consequently to direct the respondents to continue the disbursal of the already allowed incentive increments for higher education of the petitioners.

4.The petitioners are working as Secondary Grade Teacher in the fifth respondent School. They have completed M.A.Degree in the year 2019. There is no quarrel on the fact that the M.A.Degree acquired by the petitioners is a Higher Education and the petitioners are eligible for incentive increment. Therefore, the petitioners have been rightly allowed with an incentive increment till September 2020. Thereafter, the fourth respondent by an order dated 09.10.2020 cancelled the incentive increment granted to the petitioners merely referring to the Government Order in G.O.Ms.No.37 dated 10.03.2020 and without any reasons had ordered for recovery of the increment already paid to the petitioners.

5.G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 stipulates that whoever acquired higher qualification before issuance of the said Government Order and for whom sanction of advance increment has not been issued, the same is to be granted after obtaining the concurrence from the Finance Department.



W.P.(MD)No.16298 and 16299 of 2024

6. In the case on hand, the petitioners have acquired the higher qualification before issuance of the government order and hence, the Government Order will not affect the order allowing incentive increments. Further, with regard to the financial concurrence, necessary proposal has to be sent by the respondents for getting approval of the petitioners' entitlement to get incentive increment. Without making any such proposal for such concurrence, cancelling the incentive increment already granted to the petitioners is illegal on the part of the respondents.

7. It is contended by the respondents that the order impugned in this writ petition was made in the year 2020. However, the writ petitions are filed in the year 2024 hence, the writ petitions are affected by delay and laches.

8. It appears from the records that the petitioners still continue to be in service. Just because the petitioners have chosen to challenge the order dated 09.10.2020 after four years, that cannot sanctify the order impugned in these writ petitions with any legality, which was passed without properly considering the earlier orders of the Government as regards to the incentive increments.

9. It is also to be noted that before passing the order the petitioners



W.P.(MD)No.16298 and 16299 of 2024

were not put on notice. In the order dated 09.10.2020, the reference has been made only to the Government Order and the meeting held on 06.10.2020. No reference has been made to state that notice has been sent to the petitioners before passing the impugned order.

10. Reliance was placed to the order of this Court made in a case involving a similarly placed person in W.P.(MD)No.9519 of 2024 dated 18.04.2024 [*T.Mohandass vs. The Block Education Officer-2*]. For better appreciation, the relevant portions of the said order is extracted hereunder:

“5. The petitioner got his higher qualification even before issuance of G.O.(Ms.)No.37 dated 10.03.2020, which cancels the benefit of incentive increment to the Teachers, who have acquired higher qualification. In the case of the petitioner, the incentive increment has been sanctioned to him in view of the fact that he had obtained higher qualification even before the issuance of the aforesaid G.O.(Ms.)No.37 dated 10.03.2020. Subsequently, a clarification was issued by the Government in G.O.(Ms)No.116 dated 15.10.2020, wherein, it has been clarified that the incentive increment is to be accorded and processed immediately for the Government servants those who have recruited before 10.03.2020 and acquired higher qualification before 10.03.2020, I.e., in accordance with G.O.(Ms)No.37 dated 10.03.2020.

6. For better appreciation, relevant portion of the said G.O., reads as under :

“6 (vi). The cases of Government servants who have acquired higher qualification prior to issue of this general order, and not



W.P.(MD)No.16298 and 16299 of 2024

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 post 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, then they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held / degree acquired."

7. The above clause would go to show that whoever acquired higher qualification before issuance of G.O.Ms.No.37 and for whom sanction of advance increment has not been issued, the same is to be granted, since sanction was already issued by the Administrative Department concerned, after obtaining the concurrence from the Finance Department. In the case on hand, the sanction order has been issued on 16.04.2020 i.e., one month after the G.O.(Ms)No.37 dated 10.03.2020.

8. When similar issue came up for consideration before this Court in W.P.(MD)No.9364 of 2024, this Court allowed the said writ petition on 16.04.2024. For better appreciation, the relevant portion of the said order read as under :

"7. However, in the subsequent Government Order in G.O.Ms. 116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, the following clarification has been issued in Serial No.3 of the Tabular Column.

S.No.	Points raised for clarifications	Clarification Issued
-------	----------------------------------	----------------------



3. Is there any cut-off date for sanctioning advance increment, if a Government servant recruited before 10.03.2020 and acquired the higher qualification or Departmental test (Account test for Sub-ordinate Officers Part-I) before 10.03.2020 and orders sanctioning advance increment was not issued either due to administrative reasons or belated claims by the individuals?	Yes. All such cases should be processed immediately either as per para 6(vi) of the Government Order 1st read above or as per the conditions in rulings (3) and (4) under FR 31-A in consultation with Personnel and Administrative Reforms (FR-IV) Department, and orders are to be issued before 31.03.2021.
---	--

8. Therefore, the Government Order in G.O.Ms.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020, withdrawing the incentive increment has to be read along with the subsequent clarification given in the Government Order in G.O.Ms. 116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020, especially in the light of Regulation 6(vi) of G.O.Ms. 37, Personnel and Administrative Reforms (FR-IV) Department, dated, 10.03.2020.

9. The petitioner has been sanctioned with the incentive increment on 18.05.2020 which is subsequent to the issuance of G.O.Ms.37, Personnel and Administrative Reforms (FR-IV) Department, dated, 10.03.2020. In such case, the order ought to have been passed by the Administrative Department after getting concurrence from the Finance Department.

10. So, it is up to the petitioner to submit his explanation in case he is an awardee of additional increment in accordance with the Regulation 6(vi) of G.O.Ms.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and, it is also up to the Administrative Department concerned to rectify its mistake if concurrence has not been obtained from the Finance Department before awarding incentive increment to the petitioner.



*11. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the second respondent in Na.Ka.No.61/A1/2024 dated 26.03.2024 is set aside. The petitioner is also at liberty to give a fresh representation to the second respondent within a period of two weeks from the date of receipt of a copy of this order and the second respondent is directed to consider the representation, if any given by the petitioner, in accordance with Regulation 6(vi) of G.O.Ms.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and also the subsequent clarification issued in G.O.Ms.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020 and pass appropriate orders within a period of eight weeks from the date of representation of the petitioner. No costs. Consequently, the connected Miscellaneous Petitions are closed.”*

9. Coming to the case on hand, the petitioner was allowed to enjoy the incentive increment without any hurdle right from he acquired the qualification. While so, the impugned order has been passed on 26.03.2024, after giving notice to the petitioner calling for his explanation. When the petitioner has given his explanation stating that his case is covered under G.O.(Ms)No.37, dated 10.03.2020, the respondent ought to have sent the papers for formal financial concurrence. However, the respondent has cancelled the incentive increment thereby refixing the scale of the petitioner.

10. The respondent has not properly appreciated the facts and circumstances and has passed the order to the sheer detriment of the petitioner, knowing fully well that the impact of the earlier orders do not take away the privileges of incentive increment available to those persons, who got their qualification prior to the issuance of G.O. (Ms)No.37 dated 10.03.2020.”



W.P.(MD)No.16298 and 16299 of 2024

11.The petitioner's entitlement is not denied by the respondents.

The financial concurrence as alleged by the respondents is just to ensure the financial allotment and convenience. Hence, it is thoroughly illegal on the part of the respondents to cancel the earlier sanction to the petitioners. In such circumstances, the dictum laid down in **T.Mohandass's** Case (cited supra) is squarely applicable to the facts of the present case.

12.In view of the above stated reasons, this writ petition is **allowed** and the order passed by the fourth respondent dated 09.10.2020 in Na.Ka.No. 572/AA1/2020 is set aside. The respondents are directed to continue to grant incentive increment already allowed to the petitioners. It is needless to add here that the recovery, if any made, pursuant to the order impugned in these writ petitions, shall be refunded to the petitioners forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

22.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
ta



W.P.(MD)No.16298 and 16299 of 2024

WEB COPY

- To
- 1.The Government of Tamil Nadu,
Rep.by its Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai-9.
 - 2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai-6.
 - 3.The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Thoothukudi.
 - 4.The Block Educational Officer,
The Office of the Block Educational Officer,
Sathankulam-628 704,
Thoothukudi District.
 - 5.The Correspondent,
R.C.Primary School,
Periyathalai-628 703,
Thoothukudi District.



WEB COPY



W.P.(MD)No.16298 and 16299 of 2024

R.N.MANJULA, J.

ta

W.P.(MD)Nos.16298 and 16299 of 2024

22.07.2024