



W.P.(MD)No.17093 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.17093 of 2024

and

W.M.P.(MD)Nos.14705 and 14706 of 2024

H.David Sudhakaran

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Chief Secretary to Government,
Personnel and Administration
Reforms (FR-IV) Department,
Secretariat, St.George Fort, Chennai.
- 2.The State of Tamil Nadu,
Rep.by its Chief Secretary to Government,
Human Resources Management (FR-IV) Department,
Secretariat, St.George Fort, Chennai.
- 3.The Director of School Education,
O/o.Director of School Education,
DPI Complex, College Road, Chennai-600 006.
- 4.The Joint Director of School Education,
O/o.Joint Director of School Education,
DPI Complex, College Road, Chennai-600 006.
- 5.The Chief Educational Officer,
O/o.Chief Educational Office,
Virudhunagar, Virudhunagar District.



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6.The District Educational Officer,
O/o.District Educational Office,
Virudhunagar, Virudhunagar District.

7.The Secretary,
MN.MSP. Senth Kumara Nadar,
Higher Secondary School,
Mallanginar, Virudhunagar District.

8.The Treasury Officer,
Chief Treasury Office,
Collectorate, Virudhunagar,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned Government order passed by the 2nd respondent vide G.O. (Ms).No.95 Human Resources Management (FR-IV) department dated 26.10.2023 and quash the same as illegal in so far as it restricts the incentive increment who acquired qualification prior to 10.03.2020 and consequentially to direct the respondents to disburse the incentive increment in terms of the proceedings of the 7th respondent in Na.Ka.No.42/2019 dated Nil.11.2019 as endorsed by the 8th respondent within the period that may be stipulated by this Court.

For Petitioner	: Ms.R.Geethanjali for M/s.Ajmal Associates
For R1 to R6	: Mr.M.Siddharthan Additional Government Pleader



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4. Since the subject matter was already decided in the earlier batch of Writ Petitions of the Co-ordinate Bench, this Court is not inclined to deal with the validity of G.O.(Ms)No.95 dated 26.10.2023 once again. If the petitioner is still aggrieved, he can seek permission of the Court and file 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 their relief in terms of G.O.(Ms)No.37, Personal 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 up 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



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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 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 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. 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



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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, ofcourse, 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 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 petitioner herein is also similarly placed as that of the appellant in the above writ appeal, this petitioner is also entitled for the same relief.



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7. In view of the above stated reasons, this Writ Petition is disposed of by directing the respondents to consider the petitioner's application for claiming incentive increment in light of the above judgments and the Rules in force and pass orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2024

NCC:yes/nodzx
Index:yes/no
Internet:yes/no
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To

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Secretariat, St. George Fort, Chennai.
2. The Chief Secretary to Government ,
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R.N.MANJULA, J.

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