



W.P.(MD).No.16793 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.16793 of 2024

J.S.Kavitha

... Petitioner

Vs

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 District Educational Officer,
Sivakasi District Educational Office,
Sivakasi, Virudhunagar District.
4. T.N.P.M.Marimuthu Nadar Higher Secondary School
represented by its Secretary,
Thalavaipuram, Rajapalayam Taluk,
Virudhunagar District- 626 188.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 3rd respondent to implement his proceedings in Na.Ka.No.7253/A8/2019 datd 09.03.2020 and



W.P.(MD).No.16793 of 2024

extend the incentive increment to the petitioner for having acquired qualification in M.Phil (English) with all consequential monetary and service benefits in view of the order of this Court in W.A(MD)No.1052 of 2024 dated 21.06.2024 within the time frame that may be fixed by this Court.

For Petitioner : Mr.S.I.Muthiah

For Respondents : Mr.T.Amjadkhan
Government Advocate
for R1 to R3

ORDER

Heard Mr.S.I.Muthiah, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate for the respondents 1 to 3. Since no adverse order is going to be passed against the 4th respondent, notice to the fourth respondent is dispensed with.

2.The petitioner has filed this Writ Petition seeking for a direction to the 3rd respondent to implement his proceedings in Na.Ka.No.7253/A8/2019 dated 09.03.2020 and disburse the incentive increment to the petitioner for having acquired qualification in M.Phil (English) with all consequential monetary and service benefits.



W.P.(MD).No.16793 of 2024

WEB COPY

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The learned counsel for the petitioner submitted that the incentive increment claimed by the petitioner is accepted by the 3rd respondent and necessary entries have been made in the petitioner's Service Register, vide his proceedings in Na.Ka.No.7253/A8/2019 dated 09.03.2020. However, the monetary benefits have not been disbursed by citing G.O.Ms.No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 and G.O.Ms.No.95 Human Resources Management, dated 26.10.2023. The petitioner has acquired the M.Phil (English) Degree qualification in the year 2018 which is prior to the issuance of the above said Government Orders. Hence, the petitioner has sent a representation on 16.07.2024. Since the same was not considered so far, the petitioner has filed this writ petition.

5. A similar issue was already dealt with by the Division Bench of this Court in W.A.(MD) 1052 of 2024, dated 21.06.2024. The Division Bench has confirmed that the incentive increment is permissible for those persons, who already have the higher qualification and who had also made their



W.P.(MD).No.16793 of 2024

application prior to issuance of G.O.Ms.No.95, dated 26.10.2023 and they cannot be denied with the said benefit by citing the above Government Order. Having convinced to sanction the incentive increment by complying the above Division Bench judgment in W.A(MD)No.1052 of 2024 dated 21.06.2024 in letter and spirit, now the respondents cannot retract and abstain from implementing the same. The relevant portion of the judgment is extracted as under:

“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



W.P.(MD).No.16793 of 2024

grant of incentive increment. Further, the clarification issued in G.O. (Ms)No.95, had been 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 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.”



W.P.(MD).No.16793 of 2024

WEB COPY

6. In this regard, it is appropriate to refer the earlier order of this Court in W.P(MD)No.12797 of 2024, dated 18.06.2024, wherein, this Court has made the following observations:

“4.On perusal of G.O.Ms.No.95, it is stated that the lump-sum amount is awarded for the State Government employees for having acquired additional qualification after 10.03.2020. The relevant part of G.O.Ms.No.95 would read as under:

“6.Accordingly, orders were issued in the Government order third read above, namely G.O. (Ms) No.120, Human Resources Management (FR-IV) Department, dated 01.11.2021, for granting incentive in the form of one-time lumpsum amount to the State Government Employees for having acquired additional qualification after 10.03.2020 as follows:-

Sl.No	Higher Qualification	Amount(Rs.)
1	Ph.D.	25,000/-
2	P.G.Degree or equivalent	20,000/-
3	Degree / Diploma	10,000/-

It may be noted that this decision emulates closely the decision taken by Government of India which in turn based on the 7th Central Pay Commission recommendations, ie., to grant a one time lumpsum incentive to the relevant higher educational qualifications. In this regard, further clarifications were also issued in the Government letter fourth read above.”

5.Since the petitioner has claimed that her husband had acquired the higher qualification of M.Phil Degree in the year 2018 itself, I feel the application of G.O.Ms.No.95 for the petitioner's case and awarding a lump-sum is not correct.

6.In view of the same, this Writ petition is allowed and the impugned order in Na.Ka.No.O3/7653/2024, dated 27.05.2024 is hereby set aside. The respondents are directed to reconsider the representation of the petitioner



W.P.(MD).No.16793 of 2024

WEB COPY

afresh and pass orders by sanctioning the incentive increment for acquiring M.Phil Degree by the petitioner's husband, within a period of four weeks from the date of receipt of copy of this order.”

7. Even in the instant case, the petitioner has acquired higher qualifications prior to the issuance of the Government Order in G.O.Ms.No.95 Human Resources Management, dated 26.10.2023. Hence, she is obviously entitled to incentive increment.

8. In view of the above stated reasons, this Writ Petition is **allowed** and the respondents are directed to consider the application of the petitioner to disburse the incentive increment to the petitioner in the light of the above observations, within a period of four weeks from the date of receipt of a copy of this order. No Costs.

24.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PJJ

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



W.P.(MD).No.16793 of 2024

2. The Director of School Education,
College Road, Nungambakkam,
Chennai – 600 006.
3. The District Educational Officer,
Sivakasi District Educational Office,
Sivakasi,
Virudhunagar District.



WEB COPY



W.P.(MD).No.16793 of 2024

R.N.MANJULA, J.

PJL

W.P.(MD).No.16793 of 2024

24.07.2024