



W.P.(MD)No.18289 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.18289 of 2021

Parnapas

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
represented by its Secretary,
Department of Education,
St. George Fort, Chennai.
- 2.The Director of School Education,
College Road,
Chennai – 9.
- 3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
- 4.The District Educational Officer,
Tirunelveli District,
Tirunelveli.
- 5.The Correspondent,
St.John's Higher Secondary School,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 4th respondent passed in Na.Ka.No. 3989/25/2020 dated 12.08.2021 and consequentially direct the respondents to disburse second incentive increments to the petitioner for



W.P.(MD)No.18289 of 2021

acquiring higher qualification of M.Phil (Economics).

For Petitioner : Mr.S.Chellapandian
For Respondents 1 to 4 : Mr.M.Sarangan
Additional Government Pleader
For 5th Respondent : MrAlwin Balan

ORDER

This Writ Petition has been filed to quash the impugned order of the 4th respondent passed in Na.Ka.No.3989/5/2020 dated 12.08.2021 and to direct the respondents to disburse second incentive increments to the petitioner to acquiring higher qualification of M.Phil (Economics).

2.The facts, which led to the filing of the Writ Petition in brief is as follows:-

(i)The petitioner was appointed as a BT Assistant Science on 18.06.1996 with the qualification of B.Sc., B.Ed., at Schafer Higher Secondary School. The said School is a Minority Educational Institution. He was transferred to the 5th respondent School under the Corporate Management in the year 2000. In the said year, the petitioner completed his M.A. Economics and have received incentive increment for the same from the year 2000, vide proceedings dated 01.04.2002. While so, during the year 2005, he further joined M.Phil Economics course through distance education at Annamalai University. On completion of M.Phil in the year 2008, a degree was also conferred on the petitioner by the Annamalai University on March 2008. Though the petitioner had sought



W.P.(MD)No.18289 of 2021

for no objection to pursue with higher education, namely, M.Phil, vide letter dated 02.11.2005, before joining the said course, the respondents for the reasons known to them, failed to respond to his request. However, the petitioner under the strong impression that the respondents do not have any objection for him to pursue M.Phil degree, he continued the course and completed the same in the year 2008. On completion and obtaining the M.Phil degree in the year 2008, he made a request to the 5th respondent to forward a proposal to the 4th respondent for grant of second incentive increment for having acquired the higher qualification, namely, M.Phil.

(ii)Following which, the 5th respondent forwarded the proposal to the 4th respondent for grant of second incentive increment for acquiring higher education, namely M.Phil. Since the same was not considered by the 4th respondent, the 5th respondent once again forwarded the petitioner's proposal on 26.12.2014 with relevant documents, however, the same was returned by the 4th respondent on 22.01.2015 without considering the G.O.Ms.No.18 dated 18.01.2013. Thereafter, the 5th respondent with detailed explanation along with G.O.Ms.No.18 dated 18.01.2013, resubmitted the petitioner's proposal. But, in the meanwhile, the 4th respondent vide order dated 29.11.2019, had rejected the petitioner's proposal. Assailing the said rejection order, the petitioner filed a Writ Petition in W.P.(MD)No.13316 of 2020 and this Court was



W.P.(MD)No.18289 of 2021

pleased to allow the Writ Petition by setting aside the rejection order thereby, directing the respondents to positively consider the petitioner's proposal, if not otherwise disqualified within a period of 12 weeks from the date of receipt of the said Court order. However, when the petitioner was on the fond hope that his proposal would be positively considered by the 4th respondent thereby, granting second incentive increment, the 4th respondent once again rejected his proposal citing G.O.Ms.No.37 dated 10.03.2020. Challenging the same, this Writ Petition came to be filed.

3.The learned counsel appearing for the petitioner submitted that his case would be squarely covered by the judgment of the Hon'ble Division Bench in W.A.(MD)No.975 of 2024 dated 12.06.2024 and pressed for allowing the Writ Petition.

4.The 4th respondent has filed a counter affidavit and the learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that the petitioner at the first instance, on completing his degree M.A. Economics in the year 2000, was duly awarded with incentive increment for M.A. Economics degree. However, he further joined M.Phil degree through distance education at Annamalai University in the year 2005 without getting any prior permission from the Department for pursuing higher studies of M.Phil. In view of the order passed by this Court in W.P.(MD)No.1336 of 2020, the petitioner's



W.P.(MD)No.18289 of 2021

proposal as forwarded by the 5th respondent was duly considered by the 4th respondent and has been rejected in accordance to the terms of G.O.Ms.No.37, dated 10.03.2020 and there is no infirmity in the same. He further insisted that it is for the petitioner to produce the prior permission from the Head of the Department for studying M.Phil through correspondence course as studying would be detrimental to the discharge of his duties. He categorically contended that the very degree obtained by him through distance mode in the year 2008 is itself under dispute whether the same is valid or invalid. In view of the fact that the petitioner completed the degree course in the year 2008, the degree of M.Phil, which he obtained through distance mode of education is treated as an invalid degree. Accordingly, he contended that the request of the petitioner for sanctioning incentive increment for the M.Phil degree is not sustainable and pressed for dismissal of the Writ Petition.

5.Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents 1 to 4, the learned counsel for the fifth respondent and carefully perused the materials available on record.

6.For better clarity, the relevant portion of the judgment passed by this Court in W.A.(MD)No.975 of 2024, dated 12.06.2024, is hereunder extracted as follows:-



W.P.(MD)No.18289 of 2021

"7.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 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 be 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, of~course, after obtaining necessary permission, had acquired such qualification, prior to the issuance of Government Order, are entitled for the award of incentive increment.

...

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."

7.However, in the instant case, the petitioner himself in his affidavit in paragraph no.3 had stated that he sought for no objection to pursue higher education namely, M.Phil, by letter dated 02.11.2005.



W.P.(MD)No.18289 of 2021

However, the respondents for the reasons known to them, have failed to respond to his request and only on the impression that the respondents do not have any objection with respect to the petitioner pursuing M.Phil degree, he continued to pursue the said course and completed the same in the year 2008. In view of the observation made by the Hon'ble Division Bench in W.A.(MD)No.975 of 2024, that the teachers, who after obtaining necessary permission from the authorities, if acquired higher qualification are entitled to be awarded with advance increment for higher qualification, it is now pertinent to decide on the question as to, if the failure on the part of the petitioner for obtaining prior permission before pursuing M.Phil degree would decide disentitle him from a grant of advance increment for having acquired M.Phil degree has to be decided. However, this Court is of the considered view that the judgment passed by the Hon'ble Division Bench of this Court in the case of ***Director of Elementary Education, Chennai versus G.Vijayalakshmi and another*** reported in ***2015 6 MLJ 315***, has not been brought to the notice of the Hon'ble Division Bench in W.A.(MD)No. 975 of 2024, which dealt with a similar issue. As far as the question of obtaining prior permission for undergoing higher studies, paragraph nos. 12 and 13 of the said judgment reported in ***2015 6 MLJ 315*** mandates as follows:-

“35. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, have been framed, in exercise of



W.P.(MD)No.18289 of 2021

WEB COPY

the powers, under Section 56 of the Act. Both the Act and the Rules do not speak about the powers of the Director of Elementary Education, to make any Government Order, ipso facto, applicable to both the teaching and non~teaching staff, in the schools, recognised and governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. As stated supra, Government Orders, referred to in the earlier paragraphs, were issued by the Government, while dealing with Rule 24~A of the Tamil Nadu Government Servant's conduct Rules, 1973, which is applicable only to government servants. Code of conduct, as prescribed in Annexure~II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder, alone can be made applicable to teaching and non~teaching staff, working in recognised schools. No doubt, by addition or deletion of substitution, an amendment can be made to the statutory provisions dealing with the code of conduct for the staff in a recognised private school, by the Government and consequently, modify the code of conduct prescribed in Annexure~II. But the Director of Elementary Education, Chennai, cannot import rule 24A of the Tamilnadu Government Servant Rules into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules made thereunder. Incorporation of Section 24A directly into the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is beyond the legislative competence of the Director of Elementary Education and such a course is impermissible under the statutory provisions. The School Committee has the powers to appoint and dismiss a teaching staff. Such committee also



W.P.(MD)No.18289 of 2021

has the powers to grant leave to any staff.

36. As discussed in the foregoing paragraphs, School Committee is the authority to deal with service conditions of the staff. Materials available on record, do not indicate as to whether, the Government have issued any orders, in exercise of the powers, conferred under Sections 51 and 51~A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, by which a teaching and non~teaching staff, working in a recognised schools, have to obtain sanction of leave, from the Director of Elementary/School Education, as the case may be. The contention of the appellants that the staff works in a recognised private school, has to obtain a -No objection certificate- from the Head of Department, viz., the Director of Elementary Education, on the ground that he is the appointing authority, cannot be countenanced, as he is not the appointing authority under the Tamil Nadu Recognised Prvate Schools (Regulations) Act, 1973.

37. Unless and until, the Government issues any order, within the frame work of the statute, which governs the recognised and aided schools, the Director of the Elementary Education, Chennai, cannot assume jurisdiction, extending the abovesaid Government Orders, which are intended mainly for to the government servants, where there are Heads of the Department. Though recognised private aided institutions, perform a public duty and receive salary for the staff, through State Aid, yet in sor far as grant of leave is concerned, it is sanctioned only by the School Committee, in exercise of their powers, under Section 18 of the Act.



W.P.(MD)No.18289 of 2021

38. *Offices of a Department may be located at different places, for which, there may be a Head of the Department. But a recognised aided private school, cannot be said to be a unit of the Department of School Education. On the other hand, it is an independent unit, governed by the statutory provisions of the Act and the rules framed thereunder. The Director has the powers to issue directions, only within the frame work of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.*

39. *Merely because, the petitioner has not obtained sanction of leave from the Director of Elementary Education, Chennai, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in particular, the Code of Conduct framed in Annexure~II, in terms of Section 21 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, read with Rule 16 of the Rules framed thereunder. Conditions imposed in the order, dated 30.05.2014, of the Director of Elementary Education, Chennai, can at best be made applicable, only to the extent, within the statutory provisions, to which, the recognised aided schools and the staff therein, are bound to follow. At the risk of reptition, Government orders issued are amendments to rule 24A of the Government Servant Conduct Rules, and not to Tamil Nadu Recognised Private Schools (Regulation) Act. 1973.--*

13. *The above judgment is squarely applicable to the present facts and circumstances of the case. Merely*



W.P.(MD)No.18289 of 2021

WEB COPY

because the petitioner has not obtained prior permission from the Director of School Education for joining the correspondence course, it cannot be said that there is a violation of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder. Any Government Order passed should be within the ambit of the statutory provisions of the Act and the Rules and if there is any conflict between the statutory provisions and the Government Order, the statutory provisions will prevail and therefore, the petitioner need not get prior permission from the authority for undergoing higher studies and hence, the petitioner is entitled to incentive increment."

8.In the instant case, obviously the petitioner is serving as a BT Assistant in the 5th respondent Minority Educational Institution. In view of the same, the above judgment is squarely applicable to the present facts and circumstances of the case. Merely because the petitioner has not obtained prior permission from the Director of School Education for obtaining M.Phil degree, it cannot be a reason for rejecting the petitioner's claim for grant of advance increment for having acquired the said M.phil degree. In view of the same, the impugned order in Na.Ka.No.3989/5/2020 dated 12.08.2021, is hereby quashed and the respondents are directed to disburse second incentive increment to the petitioner for acquiring the higher qualification of M.Phil Economics within a period of 12 weeks from the date of receipt of copy of this order.



W.P.(MD)No.18289 of 2021

WEB COPY

9. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs.

08.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Secretary,
Government of Tamil Nadu,
Department of Education,
St. George Fort, Chennai.
2. The Director of School Education,
College Road,
Chennai – 9.
3. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
4. The District Educational Officer,
Tirunelveli District,
Tirunelveli.



WEB COPY



W.P.(MD)No.18289 of 2021

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.18289 of 2021

08.07.2024