



W.P(MD)No.21040 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

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THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P(MD)No.21040 of 2022

B.Ponni

... Petitioner

Vs.

1.The District Educational Officer,
Ramanathapuram.

2.The Block Education Officer,
Nainarkovil,
Ramanathapuram.

3.The Headmaster,
Panchayat Union Primary School,
Thalayadikottai,
Nainarkovil Union,
Ramanathapuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in O.Mu.No.609/A1/2020, dated 22.06.2020 and consequently direct the second respondent to grant the second incentive increment to the petitioner within the time fixed by this Court and pass such other and further orders as this Court.



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For Petitioner : Mr.S.Satheesh Kumar

For R-1 & R-2 : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

This writ petition has been filed to quash the order, dated 22.06.2020 passed by the second respondent and consequently, direct the second respondent to grant the second incentive increment to the petitioner within the time fixed by this Court.

2. The case of the petitioner is that the petitioner has completed her diploma in Teacher Training Education in 2004 and after getting selected into Government service, she joined as Secondary Grade Teacher in Vallam Village, Nainarkovil Union on 17.12.2012 and at present, she is working as Secondary Grade Teacher in Thalayadikottai from 18.08.2015. After completing her B.Ed., in Tamil, the second respondent through his proceedings in Na.Ka.No. 43/A1/2018, dated -04-2018 has passed order for first incentive. The petitioner has completed her M.A., Tamil from Tamil Nadu Open University from 2017 to 2019 after getting prior permission from the second respondent through his



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proceedings in O.Mu.No.1359/A1/2017, dated -12-2017. The petitioner has completed her M.A., Tamil in the year 2019 and after completing M.A., Tamil she has applied for second incentive increment through the third respondent with all relevant documents on 13.01.2020. Subsequently, the second respondent has returned the proposal by seeking clarification and the same has been answered through the third respondent on 23.03.2020 and the same has been rejected through the impugned order in O.Mu.No.609/A1/2020, dated 22.06.2020 by citing G.O(Ms)No.37, dated 10.03.2020. Hence, the present writ petition.

3. The learned Counsel appearing for the petitioner submitted that the petitioner has completed M.A., Tamil degree after obtaining permission from the competent authority and the learned Government Advocate appearing for the official respondents mainly contend that as per G.O(Ms)No.37, Personnel and Administration Reforms (FR-IV) Department, dated 10.03.2020, the decision to grant incentive increment has been done away. In the instant case, the petitioner has completed M.A., Tamil degree in September 2019 much prior to the issuance of the above said Government Order.



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4. The learned Counsel appearing for the petitioner also relied on the judgment of the Hon'ble Division Bench of this Court in a similar case in W.A(MD)No.975 of 2024, dated 12.06.2024 and the relevant paragraph of the same is extracted and reads as follows:

"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.

10.In the instant case, admittedly, the first respondent after obtaining necessary permission had acquired M.A. (Tamil) degree as early as on 18.05.2019, which is well



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before the issuance of G.O.(Ms)No.37, dated 10.03.2020 and the first respondent had been awarded only one incentive increment for the B.Ed., course. Hence, the first respondent is entitled for the sanctioning of second advance increment for the M.A.(Tamil) degree obtained by her, as covered under Clause-6(vi) of G.O(Ms)No.37. In such view of the matter, we find no reason to interfere with the order passed by the learned Judge and the order of the Writ Court is accordingly, sustained."

5. He has also relied on another judgment of the same Hon'ble Division Bench of this Court following the order passed in W.A(MD)No.975 of 2024 and the writ appeal is W.A(MD)No.1052 of 2024, dated 21.06.2024 and the relevant paragraph of the same is extracted and reads as follows:

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:



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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 are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degrees acquired.”

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 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



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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.



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6. The learned Counsel appearing for the petitioner further submitted that the writ petitioner seeking only second incentive increment and she is entitled for the same since she has studied the M.A., Tamil degree course only after approving the prior permission of the authorities and as per the judgments of the Hon'ble Division Bench of this Court, once the permission is obtained, the second incentive increment cannot be denied by the respondents in view of the G.O(Ms)No.37, dated 10.03.2022 since the petitioner has completed the course much prior to that (i.e.,) in the year 2019.

7. The counter affidavit was filed by the first respondent on 30.09.2022. As per the counter affidavit filed by the first respondent, the relevant portion is reads as follows:

"6. It is submitted that as per G.O(Ms)No.37 that the previous orders were not issued, then the employee is not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held / degree acquired. In the present case there is no previous orders sanctioning incentive increment for higher qualification was passed to the petitioner. Hence, as per G.O(Ms)No.37 under Sub Clause 6(vi) the petitioner is not entitled to the incentive increment for higher studies.



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7. *It is submitted that the Government has taken a policy decision to stop giving incentive increments. The G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 wherein, the decision to grant incentive increment has been done away. The G.O(Ms)No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020 wherein, it has been clarified the date from which the Government Order in G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 came into force. These Government Orders have come into force for the period after G.O(Ms)No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 was issued."*

8. Heard both sides and perused the materials available on record.

9. The learned Government Advocate appearing for the official respondents submitted that the review application has been filed against the order passed by the Hon'ble Division Bench of this Court in W.A(MD)No.975 of 2024, dated 12.06.2024. The review application has been filed to review the order passed in the writ appeal on 23.08.2024 in C.M.P(MD)No.11590 of 2024 and the same is pending before the Hon'ble Division Bench of this Court.



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10. The review has been filed with the C.M.P(MD)No.11590 of 2024 to condone the delay. Only after the delay is condoned, the main review application would be numbered by the Registry.

11. The review application is only in SR stage and the same is not even numbered. Hence, the judgment of the Hon'ble Division Bench of this Court still holds good and the respondents are bound by the above judgment.

12. The learned Government Advocate appearing for the official respondents further drew the attention of this Court to the judgment of the Hon'ble Division Bench of this Court in W.A(MD)No.1202 of 2023, dated 15.11.2023, wherein, in that case, it is pertaining to the grant of third incentive increment. Hence, the same is not applicable to the case on hand, since it is pertaining to the grant of second incentive increment to the petitioner herein.

13. In view of the above facts and circumstances of the case, the order passed by the second respondent in O.Mu.No.609/A1/2020, dated 22.06.2020



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is liable to be set aside. Accordingly, the same is quashed. The second respondent is directed to grant second incentive increment to the petitioner based on the judgments of the Hon'ble Division Bench of this Court stated *supra*, within a period of eight (8) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

14. In the result, the writ petition stands allowed with the above observations and directions. There shall be no order as to costs.

22.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The District Educational Officer,
Ramanathapuram.
- 2.The Block Education Officer,
Nainarkovil,
Ramanathapuram.
- 3.The Headmaster,
Panchayat Union Primary School,
Thalayadikottai,
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J.SATHYA NARAYANA PRASAD, J.

BTR

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