



W.A(MD)No.664 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	05.04.2024
PRONOUNCED ON	19.07.2024

CORAM :

JUSTICE N.SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A(MD)No.664 of 2015

and MP(MD)No.1 of 2015

1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of Education,
St.Fort George,Chennai – 9.

2.The Director of School Education,
College Road, Chennai – 9.

3.The District Educational Officer,
Tenkasi.

...Appellants/Respondents 1 to 3

Vs.

1. A.Ganesan

...1st Respondent/Writ Petitioner

2.The Correspondent,
A.V.S.High School,
Pulingudi,
Tirunelveli District.

...2nd Respondent/4th Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 26.11.2014 in W.P(MD)No.17379 of 2014.

For Appellants

: Mr.Sathiq Raja

Additional Government Pleader

For 1st Respondent

: Mr.S.Chellapandian



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by N.SESHASAYEE. J.,)

This Writ Appeal is directed against the order of learned single Judge dated 26.11.2014 by the respondents in W.P(MD)No.17379 of 2014. The issue before the Court is whether the 1st respondent herein is eligible to receive two advance incentive increments in terms of G.O.(Ms.)No.42, Education Department, dated 10.01.1969. For narrative convenience, the parties are referred to by their rank in W.P(MD)No.17379 of 2014.

2. The facts are:

- The case of the writ-petitioner is that some time in 1984, he had completed SSLC and thereafter he passed +2 in 1986. Subsequently, he completed his Technical Education in Agriculture both in lower grade and higher grade. On 12.02.1998, he was appointed as pre-vocational Instructor in Agriculture by the 4th respondent. According to the petitioner, he had obtained a Master Degree in History in 1999 through Annamalai Open University, and had also obtained a B.Ed., Degree later.
- G.O.(Ms.)No.42 dated 10.01.1969 provides for awarding two advance incentive increments for different categories of teachers,



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who have acquired certain additional qualifications. According to the petitioner, he is entitled to two advance increments for each of the two additional qualification that he had acquired and had applied for the same.

- On 21.08.2012, the 3rd respondent had addressed a communication to the petitioner informing him that the petitioner was not entitled to two separate advance incentive increments for both his additional qualifications but is entitled to only one, for obtaining a Degree in B.Ed., and required him to send a fresh proposal.
- Subsequently, the writ-petitioner had been granted two advance incentive increments for B.Ed., in terms of G.O.(Ms.)No.42, dated 10.01.1969. Aggrieved by the denial of two advance incentive increments, *vis-a-vis* his M.A(History) Degree, the petitioner has approached this Court.

3. The learned single Judge of this Court, who decided the matter, relied on the order passed in W.P(MD)No.5730 of 2008 dated 19.09.2011 and held it in favour of the petitioner. This order is now under challenge at the instance of the appellants/respondents 1 to 3 therein.



4. The learned Additional Government Pleader submitted that:

a) The order passed in W.P(MD)No.5730 of 2008 essentially pertains to Secondary Grade Teachers and not Specialist Teachers, such as, Pre-vocational Instructors or Vocational Instructors. He added that so far as the Specialist Teachers are concerned, G.O.(Ms.)No.42 dated 10.01.1969 provides that they would be entitled to two advance incentive increments when they obtained either B.T or B.Ed Degree or other recognized equivalent decree in this State. The petitioner had obtained B.Ed., Degree and he being a Specialist Teacher within the meaning of G.O.(Ms.)No.42, dated 10.01.1969, he has been awarded two advance increments. Obtaining a degree in M.A is not one of the higher qualification prescribed in G.O.(Ms.)No.42 for Specialist Teachers to obtain two advance incentive increments. Indeed, M.A or M.Sc. degrees are considered for grant of two advance incentive increments in cases of Teachers who possessed B.T or B.Ed degrees This has to be understood in the context of G.O.(Ms.)No.1032 dated 22.07.1971. Secondary or Senior Basic Grade Teachers were noted to be qualified for obtaining two additional advance incentive increments, when they obtained B.T or B.Ed., Degrees and



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thereafter, when they obtained M.A or M.Sc or M.Ed Degrees, they would be entitled another two additional advance incentive increments. This has to be distinguished in the case of other Specialist Teachers where G.O.Ms.No.42, dated 10.01.1969 stops with B.T or B.Ed Degrees for them, and does not go beyond that.

- b) So far as grant of two advance increments is concerned, this is more in the nature of grant of an incentive and they are not part of the service conditions or rules. So far as grant of such incentivised increments are concerned, it has to be confined to that which are specified in G.O.(Ms.)No.42 dated 10.01.1969. The learned single Judge, even as he agreed with the scope of G.O.Ms.No.42, proceeded on the footing that the minimum qualification for being appointed as Vocational Instructors has not been separately provided, and hence different category of teachers cannot be discriminated. This is however is not correct since Annexure-V of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, has prescribed separate qualifications for appointment to different category of teachers. Here, the learned single Judge has equated Specialist Teachers with other category of Teachers specified in



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G.O.(Ms.)No.42 dated 10.01.1969, but Vocational Instructor has to be treated as Specialist Teacher and not on par with other category of Teachers.

5. Admitting that the respondent will fall within the ‘Other Specialist Teachers’ vis-a-vis G.O.Ms.No.42, dated 10.01.1969, the learned counsel for the respondent submitted that these Specialist Teachers must be equated with Secondary Grade Teachers inasmuch as the responsibilities are identical. Placing reliance on the order of another Division Bench in *the Director of School Education, Chennai and 2 others Vs. A.Rathinam* [W.A.No.1792 of 2019, dated 16.10.2020], the learned counsel submitted that on an earlier occasion, this Court has treated the Craft Teachers who fall within the category of ‘Other Specialist Teachers’ as equivalent to Secondary Grade Teachers. So far as the Secondary Grade Teachers are concerned, they are eligible for two incentives of two advance increments each. In other words, they are entitled to four advance increments in all and there the cap gets fixed. There is no rhyme or reason for not equating the other Specialist Teachers with a Secondary Grade Teacher.



6. Responding to the said argument of the respondent counsel, the learned Additional Government Pleader submitted:

a) The right to claim incentivised increments is traceable to a Government Order but for which no teacher would have been eligible to claim any incentivised increments. Hence the claim for grant of additional increments might have to be considered within the four corners of the Government Order. There is nothing in G.O.No.42 nor in any of the subsequent Government Order covering the area to indicate that the other Specialist Teachers can be equated with Secondary Grade Teachers. Indeed, the qualification required are different, the nature of responsibility assigned to them is different, and unless there is anything to indicate that both the categories of teachers can be equated, what is applicable to a Secondary Grade Teacher cannot be extended to those who fall within 'Other Specialist Teachers'.

b) In their order in *the Director of School Education, Chennai and 2 others Vs A.Rathinam* [W.A.No.1792 of 2019, dated 16.10.2020], the learned Judges who authored the Order did not have an occasion to pointedly ascertain this distinction, and have been



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persuaded by certain earlier orders passed by this Court. This apart, the said judgment essentially deals with G.O.Ms.No.1023 and 1024, Education, Science and Technology Department, dated 09.12.1993 which in effect has put a cap on the number of incentives a teacher may obtain. All these Government Orders in effect state that a teacher during his entire service is only entitled to a maximum of two incentives of two advance increments each, in all, four advance increments and not more. Therefore, the said authority may not have any application to the present case.

- c) In this regard, a Full Bench of this Court in a batch of cases commencing with W.A.No.3674/2019, dated 06.04.2022, had held that the cut-off date for application of G.O.Ms.No.1023 and 1024 will be prospective and from the date on which these Government Orders were issued. In other words, there cannot be any retrospective recovery possible even if some are given three advance increments.

7. The learned counsel for the respondent/writ petitioner would now submit that the very issue is not the application of G.O.Ms.No.1023 and



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1024 that is came to be considered but an identical issue which involved in this case has also been touched upon (read paragraph 5 upwards, paragraph Nos.27 and 28 also in W.A.No.1792 of 2019).

8. Rival submissions are carefully weighed. Judicial review of administrative action cannot be extended to the extent of expanding the scope of any Government Orders that confers benefits unless there are reasons shown. When the judgements of the earlier Division Bench of this Court in *the Director of School Education, Chennai and 2 others Vs A.Rathinam* [W.A.No.1792 of 2019, dated 16.10.2020], is scanned for details, they proceed on the premise that a secondary grade teacher and a special teacher are equals, but this view is based on an assumption that special teachers do not have a prescribed qualification to become a special teacher. Neither of these premises or presumptions are valid in law since Annexure-V of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 has prescribed specific qualification criteria for being appointed as a special teacher. Indeed if only it were the intent of the Government to equate both the Secondary grade teachers and the special teachers then it need not have passed the G.O.(Ms.)No.42, Education Department, dated 10.01.1969, showing the distinction



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between the two. What the law intends the court shall not bend, unless the constitutionality of differential treatment itself is challenged. And, if this discipline is breached then the court may unwittingly enter the domain earmarked for the Executive Government. The two judgements which either the learned counsel for the respondent has relied on, or that which the learned Single Judge has relied on, as the case may, may not be considered as setting the law correctly as those Benches were not seen to have been drawn to consider the kind of submissions now advanced.

9. It may be that the petitioners in the earlier cases might have been benefited undeservingly, but the writ-petitioner herein cannot seek parity with them since there can be no equality in illegality.

10. To conclude, this appeal is allowed and the order dated 26.11.2014 in W.P(MD)No.17379 of 2014 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) & (P.V.M., J.)
19.07.2024

Index : Yes / No
Neutral Citation : Yes / No
CM/PM



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N.SESHASAYEE, J.
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P.VADAMALAI, J.

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Pre-delivery JUDGMENT made in
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