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W.A.(MD).No.1429 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	29.09.2023
Pronounced on	24.01.2024

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

**W.A.(MD) No.1429 of 2022
and
C.M.P.(MD) No.11541 of 2022**

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai – 600 006.
- 3.The District Elementary Education Officer,
Pudukottai, Pudukottai District.

...Appellants

Vs.

- 1.A.Arul
- 2.The Secretary to Government,
Finance Department, Secretariat,
Chennai.
- 3.The Secretary to Government,



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Department of Law and Justice,
Secretariat, Chennai.

*(R2 & R3 suo motu impleaded as per the
order of this Court dated 03.08.2023 made
in W.A.(MD) No.1429 of 2022)*

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 28.10.2021 passed in W.P.(MD) No.16561 of 2017.

For Appellants : Mr.R.Baskaran, AAG
assisted by Mr.D.Sadiq Raja, AGP

For R1 : Mr.Isaac Mohanlal, Sr. Counsel
for M/s.Isaac Chambers

JUDGMENT

M.S.RAMESH,J.

The writ petitioner, while serving as a Middle School Headmaster in Panchayat Union Middle School, had acquired higher educational qualifications of B.Ed., and M.A., degrees in the year 2009 and 2010 respectively. His request for awarding an incentive increment for holding higher educational qualification was granted, through the proceedings of the third appellant dated 23.05.2016.



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2. Subsequently, the third appellant, through an order dated 16.08.2016, had referred to the proceedings of the second appellant dated 06.03.2014 and stated that since the degree of B.Ed., is an essential qualification for the post of Middle School Headmaster, it cannot be considered as possession of higher qualification and therefore, had cancelled the order granting incentive increment to him. When he had challenged the cancellation order, in W.P.(MD)No.16561 of 2017, the learned Single Judge had placed reliance on the clarification issued by the Director of Elementary Education, dated 07.06.1991, as well as similar orders passed by this Court in W.P.(MD) Nos.21368 of 2014 and 4332 of 2015 and had quashed the rejection order dated 16.08.2016 and the consequential orders and directed the authorities to sanction and award the required incentive increment.

3. In the aforesaid clarification dated 07.06.1991, issued by the Director of Elementary Education, the Director of Elementary Education had clarified that when the Middle School Headmaster acquires a higher qualification of B.Ed., he would be entitled for grant of incentive increment in view of the Government Orders in G.O.No.42, Education Department,



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dated 10.01.1969, G.O.No.107, Education Department, dated 20.01.1976, as well as several orders granting incentive increment to similarly placed Headmasters. The learned Single Judge had also placed reliance on the decisions in W.P.(MD) No.21368 of 2014 and 4332 of 2015, in which it was held that the Middle School Headmistress would be entitled for incentive increment for having acquired B.Ed., degree, in view of the subsequent proceedings of the Joint Director of Elementary Education, dated 07.11.2014.

4. The aforesaid decisions are not the only case, in which incentive increments have been awarded to the Middle School Headmasters for having acquired B.Ed., degree. In the case of ***R.Jeeva and another Vs. The District Elementary Education Officer, Karur***, passed in ***W.P.(MD)Nos. 16574 and 16576 of 2019, dated 04.12.2019***, one of us (MSRJ) had relied upon an order of the Division Bench of this Court in W.A.(MD)No.435 of 2107, which *inter alia* placed reliance on the clarification of the Director of Elementary Education, dated 24.11.2006, wherein it was clarified that since B.Lit., degree is also one of the qualification for promotion to the post of Middle School Headmaster and B.Ed., degree is not an essential



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qualification, such a Headmaster would be entitled for incentive increment for acquiring B.Ed., degree. On the basis of this decision, the two Middle School Headmistress were awarded with incentive increment.

5. Apart from all the proceedings of the Director of Elementary Education and the orders passed by this Court, numerous similar orders have also been passed, whereby the ratio that a Middle School Headmaster, who acquires higher educational qualification, would be entitled for incentive increment has been upheld. In all these cases, the Director of Elementary Education has been a party to the proceedings. In spite of this, we have been witnessing indiscriminate orders being passed by the District Elementary Educational Officers, cancelling the incentive increment already granted to the Middle School Headmasters, without reference to their own earlier proceedings. In the present writ appeal also, the first respondent herein is a victim to one such indiscriminate decisions of the educational authorities. Thus, we do not find any reason as to why the order of the learned Single Judge requires interference and the writ appeal is liable to be dismissed.



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6. The Government of Tamil Nadu is the largest litigant in the State, among which the Education Department is one among the major departments, who are parties to the legal proceedings. In such litigations, the Education Department paves it way to compel their employees to approach the Court of law, in view of the indiscriminate and illegal orders passed by them. Prejudice is caused not only to the litigant, but there is huge expenditure incurred by the Government to defend such litigations. Needless to point out that such expenditure is at the cost of the exchequer which is an unwarranted expenditure.

7. At this juncture, the learned Additional Advocate General, on instructions, submitted that the cost incurred by the Government for defending a writ petition is approximately Rs.3,000/-, which includes counter affidavit vetting fee, counter affidavit filing expenses, official travelling expenses (2 hearings) and Government Advocate fee for final hearing of the writ petition. Likewise, the expenses incurred by the Government for preferring a writ appeal would amount to Rs.27,860/-, which includes writ appeal vetting fee, filing expenses, official travelling expenses (3 hearings), Additional Advocate General engagement fee and



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Additional Government Pleader assistance fee. We are of the view that such types of expenditure requires to be recovered together with interest from the Government and utilised for public cause, by way of imposition of costs. However, we refrain from imposing such costs in the present writ appeal with a fervent hope that the Government may sensitize the heads of the departments about the seriousness of the issue as detailed above and refrain from indulging in such vexatious litigations in future.

8. In the present case, a similar order of illegal cancellation of the award of incentive increment was challenged by the first respondent herein and the learned Single Judge had rightly set aside the cancellation order and directed the authorities to grant the required incentive increment for having acquired the higher educational qualification of B.Ed., degree, through the order dated 28.10.2021. When the appellants had not complied with the order of the learned Single Judge, the first respondent herein had preferred a contempt petition in Cont.P.(MD)No.1196 of 2022, before the learned Single Judge and the same is pending, after being adjourned on several occasions. In this background, the writ appeal has been preferred with a delay of 168 days, which delay has been condoned.



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9. The learned Additional Advocate General also made a faint attempt by placing reliance on a letter issued by the Government in Letter No. 3702/Tho.Kal(2)/2017 dated 10.10.2017, touching upon their entitlement to cancel the award of incentive increment to the Middle School Headmasters. Such a submission does not deserve consideration, since the very letter dated 10.10.2017, relied upon by the learned Additional Advocate General, has been quashed by orders passed by this Court in the case of ***M.Pushpa Therese Vs. The State of Tamil Nadu, School Education Department and others in W.P.No.22907 of 2021, dated 27.10.2021.***

10. As already observed by us, we do not find any infirmity or illegality in the order passed by the learned Single Judge and that the order itself was based on the earlier proceedings of the Joint Director of Elementary Education, dated 07.11.2014, as well as the decisions rendered by this Court in the cases of similarly placed persons and which have either been implemented or become final. Thus, we do not find any reasons to interfere with such an order.



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11. Accordingly, the writ appeal stands dismissed. Consequently,
connected miscellaneous petition is closed. No costs.

(M.S.R.,J.) (M.N.K.,J.)
24.01.2024

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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To

- 1.The Secretary to Government,
Finance Department, Secretariat,
Chennai.
- 2.The Secretary to Government,
Department of Law and Justice,
Secretariat, Chennai.

Pre-delivery Judgment made in
W.A.(MD) No.1429 of 2022

24.01.2024