



W.A.(MD)No.2084 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**W.A.(MD)No.2084 of 2024
and
C.M.P(MD)No.14784 of 2024**

1.The State of Tamilnadu,
Represented by its Secretary,
Department of School Education,
Secretariat, Fort St.George,
Chennai- 600 006.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai- 600 006.

3.The Regional Accounts Officer(Audit),
School Education Department,
Madurai Region, Madurai.

4.The Chief Educational Officer,
Dindigul District, Dindigul.

5.The Headmaster,
R.V.L.N.A. Government Higher Secondary School,
Sitharevu-624 228,
Dindigul District.

.. Appellants/Respondents



W.A.(MD)No.2084 of 2024

WEB COPY

Vs.

P.Muneeswari

.. Respondent/Writ Petitioner

PRAYER: Writ Appeal under Clause 15 of Letters Patent Act praying to set aside the order dated 10.06.2024 made in W.P.(MD)No.11743 of 2024 by allowing this appeal.

For Appellants : Mr.SP.Maharajan
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Aggrieved by the order of the Writ Court quashing the orders of recovery passed by the 5th appellant against the respondent, the Department has filed this appeal. The respondent was appointed as Physical Education Director on 21.11.2005 and her services were regularised with effect from 01.06.2006. Even at the time of her entrance into service she possessed M.P.Ed and M.Phil degree



W.A.(MD)No.2084 of 2024

WEB COPY

in Physical Education. She claimed on incentive increment for possession of M.Phil degree. Since the essential qualification for her appointment was M.P.Ed., she was granted the said benefit from 01.06.2006. However, in 2021, the appellants passed an order directing the recovery of the incentive increment contending that as per G.O.Ms.No.177 dated 13.10.2016 incentive increment for M.Phil could be granted only from the date of the said Government Order. This was subject to challenge.

2. The learned Single Judge on the interpretation of the Government Order concluded that G.O.Ms.No.177 dated 13.10.2016 would apply only with reference to grant of second incentive increment and not the first incentive increment. On the said conclusion, the learned Single Judge allowed the writ petition and quashed the orders of recovery and hence, this appeal.

3. Mr.SP.Maharajan, learned Special Government Pleader would rely upon the judgment of this Court in the case of Rajmohan vs. State of Tamilnadu and others, in W.P(MD)No.4973 of 2019 dated 16.11.2022 and the judgment of the Division Bench of this Court in W.A.(MD)No.119 of 2023 dated 14.02.2023 in



W.A.(MD)No.2084 of 2024

WEB COPY

support of his submission that incentive increment in M.Phil qualification for Physical Education Teachers could be granted only from the date of G.O.Ms.No. 177, ie., on 13.10.2016.

3. We are unable to persuade ourselves to agree with the contentions of the learned Special Government Pleader. Incentive increment for Physical Education teachers for having acquired higher qualification was granted at first on 10.01.1969 under G.O.Ms.No.42. The said Government Order provided that for acquiring higher qualification, the Physical Education teacher would be entitled for incentive increments. In respect of the Physical Education Teachers, the number of incentive increments was restricted was only one and not two as in the case of other teachers. There were consistent demands by the Physical Education teachers for grant of second incentive increment. The Government passed the Government Order in G.O.Ms.No.324 dated 25.04.1995 wherein it allowed a second incentive increment for Physical Education teachers for acquiring higher qualification in Physical Education. Therefore, on passing of the Government Order in 1995, Physical Education Teachers also became entitled for second incentive increment for acquiring higher qualification in physical education.



W.A.(MD)No.2084 of 2024

WEB COPY

4. The respondent was sanctioned with incentive increment even at the time of her appointment since she had M.P.Ed qualification. Thereafter there was a consistent demand by the Physical Education Teachers for the second incentive increment to be granted. This was considered and a direction was issued by the Principal Bench of this Court in W.P.No.15069 of 2016 dated 25.04.2016 to consider the representation of Physical Education Teachers. It is resulted in the Government passing G.O.Ms.No.177 where the right of the Physical Education Teachers for a second incentive increment was recognized. While doing so, the Government tabulated the higher qualification in respect of Middle School Teachers or Physical Education Teachers working in the Middle Schools.. The qualification was prescribed as Government Teachers certificate for B.P.Ed lower grade or higher grade. The higher qualification was prescribed as B.T or B.Ed and for the second incentive increment qualification M.P.Ed, M.Phil or P.G Diploma in Yoga in respect of Physical Education Teachers. For secondary grade rank, the qualification prescribed was B.P.Ed or BPES or BMS. The higher qualification for the first incentive increment was M.P.Ed or M.Phil or PG diploma in Yoga. For the second incentive increment for higher grade was M.Phil or Ph.D. If the basic qualification prescribed as M.P.Ed, the higher qualification prescribed was



W.A.(MD)No.2084 of 2024

WEB COPY

M.Phil or Ph.D. Similar qualifications are also prescribed by the Director/Directress of Physical Education as Graduate Teachers etc. The clause 3 of the said Government Order reads as follows:

“(iii) ஏற்கனவே ஒரு ஊக்க ஊதிய உயர்வு பெற்று
வரும் உடற்கல்வி ஆசிரியர்களுக்கு தங்களின்
உயர்கல்வித்தகுதிக்காக இதர ஆசிரியர்களுக்கு
உள்ளது போன்று இரண்டாவது ஊக்க ஊதிய உயர்வு,
அரசாணை வெளியிடப்படும் நாள்முதல்
வழங்கப்படவேண்டும்.”

5. This Government Order is sought to be taken advantage by the Government to contend that incentive increment for M.Phil qualification for Physical Education Teachers was recognised for the first time only under this Government Order. Observation of the learned Single Judge in W.P.(MD)No.4973 of 2019 is also to the same effect. With due respect, we are unable to agree with the conclusion of the learned Single Judge. When the Government introduced G.O.Ms.No.324 in the year 1995, which clearly states that Physical Education Teachers would be entitled to the incentive increment for higher qualification in Physical Education which included M.Phil or Ph.D also. While granting second



W.A.(MD)No.2084 of 2024

WEB COPY

incentive increment while prescribing the eligibility for the second incentive increment the Government has clarified that these qualifications would make teachers eligible for second incentive increment, ie., clarified by the clause 3 of the Government Order which we have already extracted. Therefore, the view of the Hon'ble Justice G.R.Swaminathan that the entitlement for Physical Education Teachers on the basis of acquiring M.P.Ed qualification would commence only after issuance of G.O.Ms.No.177 dated 13.10.2016 is not correct. Moreover, the learned Judge need not have gone into the question at all in the said judgment. Hence, the said judgment related to a person claiming second incentive increment and not the first incentive increment. This is clear from the judgment of the Division Bench in Rajmohan v. The State of Tamilnadu, Chennai and others in W.A(MD).No.119 of 2023, where the Division Bench has taken note of the fact that the appellant therein was given second incentive increment in the year 1998 for M.Phil which was not then available to the Physical Education Teacher and hence, the orders of recovery were not sustained. The Division Bench judgment, in our opinion, will not apply to the facts of the case on hand since the petitioner herein is not claiming second incentive increment. We, therefore, conclude that there is no need to interfere with the order of the learned Single Judge. This Writ



W.A.(MD)No.2084 of 2024

WEB COPY

Appeal fails and it is accordingly dismissed. No Costs. Consequently, connected miscellaneous petition is dismissed.

(R.S.M., J.) (S.M., J.)
22.10.2024

NCC : Yes/No
Index : Yes / No
PJM



WEB COPY



W.A.(MD)No.2084 of 2024

R.SUBRAMANIAN, J.
and
SUNDER MOHAN, J

PJL

W.A.(MD)No.2084 of 2024

22.10.2024