

W.P.(MD)Nos.27556 of 2023, etc

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Reserved On : 13.06.2024

Delivered On : **02.08.2024**

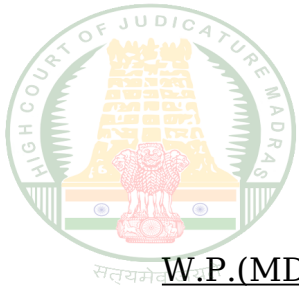
CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.27556, 28329, 28449, 28607, 28940, 29570, 30196, 30271, 30448, 31014, 31035 of 2023, 272, 105, 113, 722, 1857, 4471 of 2024, 27347, 27456, 28269, 28171, 28514, 28910, 28762, 28608, 29604, 29127, 29439, 29549, 29904, 30272, 30560 of 2023, 1458, 1624, 1625, 1628, 1629, 1630, 1631, 1633, 1634, 4472, 1635, 1632, 1636, 1626, 1627, 1907 of 2024, 2714 of 2021, 2015, 2016, 2017, 2018, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2212, 2234, 2270, 2946, 3218, 3279, 3446, 3459, 3508, 3548, 3702, 4005, 4006, 4007, 4008, 5051, 5769 and 5770 of 2024

and

W.M.P.(MD)Nos.23671, 23672, 23673, 24393, 24394, 24497, 24499, 24669, 24670, 24671, 24980, 24981, 24982, 25530, 25531, 26023, 26024, 26025, 26077, 26078, 26079, 26213, 26214, 26215, 26588, 26590, 26592, 26611, 26612 of 2023, 131 of 2024, 132, 133 145, 146, 267, 268, 269, 728, 731, 1859, 1861, 1862, 4306, 4307, 4309, 4310 of 2024, 23486, 23487, 23488, 23583, 23585, 23586, 24331, 24332, 24333, 24265, 24266, 24267, 24564, 24566, 24568, 24795, 24796, 24797, 24937, 24938, 24939, 24672, 24674, 25547, 25548, 25549, 25174, 25175, 25177, 25423, 25425, 25426, 25507, 25508, 25509, 25783, 25784, 25785, 26080, 26081, 26082, 26277, 26278, 26279 of 2023, 1498, 1670, 1660, 1661, 1669, 1647, 1648, 1652, 1653, 1662, 1663, 1664, 1666, 1658, 1659, 1654, 1655, 1649, 1651, 1656, 1657, 1665, 1667, 1679, 1680, 1668, 1671, 1921 of 2024, 10862, 2235 of 2021, 2022, 2029, 2023, 2026, 2136, 2139, 2138, 2140, 2141, 2142, 2145, 2149, 2143, 2222, 2224, 2240, 2242, 2278, 2937, 3180, 3239, 3240, 3427, 3428, 3436, 3437, 3473, 3474, 3493, 3494, 3617, 3619, 3889, 3896, 3891, 3903, 5443, 4849, 4850, 3197 and 5447 of 2024



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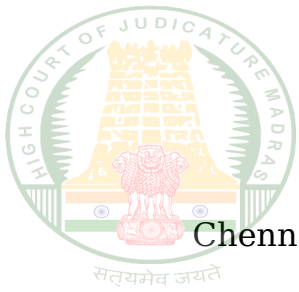
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- 1.A.Kayalvizhi,
P.G.Assistant (Chemistry),
Government Higher Secondary School,
Kottaiyiruppu,
Sivagangai District – 630 211.
- 2.S.Gunasundharai,
P.G.Assistant (Commerce),
Government Girls Higher Secondary School,
Singampunari,
Sivagangai District.
- 3.C.Manjula,
P.G.Assistant (Tamil),
Government Higher Secondary School,
Kottaiyiruppu,
Sivagangai District – 630 211.
- 4.R.Rajapriya
P.G.Assistant (Physics),
Government Higher Secondary School,
Vembathur,
Sivagangai District – 630 559.
- 5.R.Meenakumari,
B.T.Assistant (Science),
Government Higher Secondary School,
Musundapatti,
Sivagangai District – 630 309.
- 6.R.Ravi,
B.T.Assistant (Science),
Government High Secondary School,
Vadakkampatti,
Madurai District.

... Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Chief Secretary,
Department of Human Resource Management (FR-IV),
Fort St. George,



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Chennai – 600 009.

2.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George,
Chennai – 600 009.

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

4.The Joint Director of School Education,
College Road, Chennai – 600 006.

5.The Chief Educational Officer,
Sivagangai, Sivagangai District.

6.The District Educational Officer,
Sivagangai, Sivagangai District.

7.The Chief Educational Officer,
Madurai, Madurai District.

8.The District Educational Officer,
Madurai, Madurai 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 G.O.(Ms).No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023, issued by the first respondent Chief Secretary to Government, quash the same, in so far as it restricts the petitioners herein from the grant and payment of incentive increments for acquiring their respective additional higher educational qualifications viz., M.Phil., degree and further direct the respondents herein to sanction and award forthwith the incentive increment (2 advance increments) to the petitioners herein for acquiring their respective additional higher educational qualification viz., M.Phil., degree in terms of the G.O.(Ms)Nos.37 and 116, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and



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15.10.2020 respectively with all arrears and attendant benefits.

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For Petitioners
For Respondents
(in all cases)

: Mr.V.Panneer Selvam
: Mr.P.S.Raman, Advocate General
Assisted by Mr.R.Baskaran,
Additional Advocate General
Assisted by Mr.M.Sarangan,
Additional Government Pleader and
Mr.N.Ramesh Arumugam,
Government Advocate

COMMON ORDER

Prelude:-

Education appears to be the most consistent, robust and durable method for augmenting intelligence. Humans with greater propensity for intelligence go on to complete more education. Higher education is one of the vital factors of growth, performance and competitiveness in the national and international level. Intelligence quotient is a measurement of an individual's intellect and potential to understand their job performance matrix. Education is the foundation, from which the intelligence quotient of every individual stems up towards molding himself into a perfect, skilled, efficient manpower. Here is a case where the Government had consistently taken policy decisions as to the grant of cash awards/incentive increments to the employees of various Departments from time to time, for acquiring higher educational qualification while in service. Commencing from the Government Order in G.O.Ms.No.531, Finance Department, dated 25.04.1963, by the

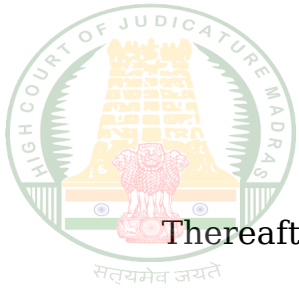


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Government of Madras, by which one advance increment for passing the prescribed departmental Account Test came to be ordered by way of a scheme of rewards, till the latest impugned Government Orders in G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and G.O.Ms.No.95, Human Resource Management (FR-IV) Department, dated 26.10.2023, by which the grant of incentive increment has been dispensed with effect from 10.03.2020 and allowing grant of lump sum amount for acquiring additional education qualification, the tale of grant of cash awards/incentive increments to the employees of the various Departments of the Government of Tamil Nadu has a chequered history.

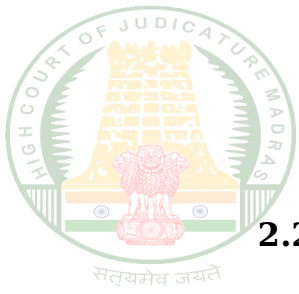
2.Gist of the case:-

2.1.The petitioners are working as Secondary Grade Teachers, BT Assistants, Primary School Headmasters, Middle School Headmasters in the Government Schools (Panchayat Union, Primary and Panchayat Union Middle Schools) coming under the third respondent School Education Department. They have completed their higher qualifications, such as B.Ed and other post graduation degrees and they were not granted with the incentive increments. Originally, the State of Tamil Nadu, issued the Government Order in G.O.Ms.No.42, Education Department, dated 10.01.1969, by which a decision was taken to grant incentive increment to the Teachers for acquiring higher qualifications.



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Thereafter, it was clarified by the Government vide G.O.Ms.No.1023, Education, Science and Technology Department, dated 09.12.1993, that the School Teachers are entitled for maximum of two sets of incentive increments for acquiring higher qualification. Hence, in view of those Government Orders, the petitioners are entitled for grant of two sets of incentive increments. But pointing out Clause No.6(VI) of the impugned Government Order in G.O.Ms.No.37, dated 10.03.2020, the request of the petitioners seeking grant of incentive increment for acquiring higher qualification was kept under cold storage stating that necessary permission is awaited from the first respondent. Though the first respondent has issued a clarification vide G.O.Ms.No.116, dated 15.10.2020, to the Government Order in G.O.Ms.No.37, dated 10.03.2020, stating that whoever have completed higher qualification before 10.03.2020, are entitled for incentive increment, the third respondent has not granted the incentive increment to the petitioners. That apart, to the shock and surprise of the petitioners, the first respondent further issued a consequential impugned Government Order in G.O.Ms.No.95, dated 26.10.2023, in which it has been decided to grant one lump sum amount to all those employees whose incentive increment request is pending consideration in uniformity with the employees who acquire higher qualification on or after 10.03.2020.



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2.2. Claiming the said decision as highly arbitrary, unjust and unlawful and that the first respondent taking undue advantage of its own wrong is trying to penalize the employees for no fault of them, these Writ Petitions came to be filed, challenging Clause 6(vi) in G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020 and the consequential Government Order in G.O.Ms.No.95, Human Resources Management (FR-IV) Department, dated 26.10.2023.

3.Submissions:-

3.1. The learned counsel Mr.Ashwin Rajasimman appearing for the petitioners submitted that, the first respondent has taken away the accrued/vested right of the petitioners by changing the norm of grant of incentive increment retrospectively, violating Articles 14 and 16 of the Constitution of India. Contending that, as per the G.O.Ms.No.42, Education Department, dated 10.01.1969, G.O.Ms.No.1023, Education, Science and Technology Department, dated 09.12.1993 and clarification issued in G.O.Ms.No.116, dated 15.10.2020, the petitioners are entitled for incentive increment for acquiring B.ed., and PG degrees, he further reiterated that, the incentive increment cannot be retrospectively modified as one time lump sum and the same is discriminatory in nature. He categorically contended that, the Hon'ble Apex Court has time and again reiterated the proposition of law that accrued right/vested right of an employee cannot be taken away retrospectively. Pointing out the case



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dealt with by the Hon'ble Apex Court in the case of ***Punjab State Cooperative Agricultural Development Bank Limited versus the Registrar, Cooperative Societies and Others*** reported in ***2022 Live Law Supreme Court 42***, he submitted that the retrospective operation, which has the effect of taking away the benefits already available to the employees under the existing rule would certainly divest the employee from his vested or accrued rights and hence, it would be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

3.2.He further submitted that, the first respondent without considering that when similarly placed employees were granted the benefit of incentive increment for acquiring higher education, it is not just and equitable in refusing to extend the benefit to all similarly placed employees including the petitioners. He further insisted that, such denial would result in discrimination in scale of pay in the post of Teacher, such as Secondary Grade Teacher, BT assistant, etc. Further he submitted that, the petitioners have completed their higher qualification well before the issuance of G.O.Ms.No.37, dated 10.03.2020 and the new policy of cancelling the grant of incentive increment, which was introduced in the year 2020 vide G.O.Ms.No.37, dated 10.03.2020, cannot be retrospectively applied to the case of the petitioners. Further he concluded that, if the consequential impugned order in G.O.Ms.No.95, dated 26.10.2023, granting one time lump sum amount can be applied



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only to those employees, who have acquired higher qualification after the issuance of G.O.Ms.No.37, dated 10.03.2020 and if the same yardstick is applied to the petitioners who have acquired the higher qualification much earlier to 10.03.2020, the same is nothing but taking away the vested right of the petitioners retrospectively and on that basis, pressed for quashing of the impugned government orders as required by them.

3.3.The learned Senior Counsel Mr.Ajmal Khan appearing for the petitioners submitted that, the petitioners are not standing in the way of the policy decision taken by the Government cancelling the advance increment. However, the only plight of the petitioners is that the rights available to them before the policy decision taken by the Government for cancelling the scheme should not be done away by the Government. So far as the cancelling of the scheme of payment of advance increment under G.O.Ms.No.37, dated 10.03.2020, the Government servants, who have obtained a higher qualification prior to the issuance of the aforesaid order, the said right has been recognized and the right can be considered only in reference to the previous orders issued by the Government and not in the reference to the G.O.Ms.No.37, dated 10.03.2020, by which the scheme of advance increment has been brought to a halt.

3.4.Reiterating that, it is needless to state that the school Teachers who acquired higher qualification prior to the issuance of G.O.Ms.No.37,



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were awarded with advance increment is not in dispute. He categorically contended that, the right to obtain advance increment in view of their higher qualification can be considered only with reference to the orders issued by the Government prior to 10.03.2020, that is, precisely prior to the issuance of G.O.Ms.No.37, on 10.03.2020. The right of the petitioners, who have acquired higher qualification prior to 10.03.2020, for receipt of incentive increment has been further confirmed by the Government by issuance of a clarification in G.O.Ms.No.116, on 15.10.2020. Pointing out the fact that Clause 6(vi) of G.O.Ms.No.37, is further clarified by issuance of G.O.Ms.No.116, he insisted that the issuance of G.O.Ms.No.95, is an initiative by the Government to do away with the protection given to the employees by the G.O.Ms.No.37 and G.O.Ms.No.116 respectively. He further submitted that, the stand of the Government in G.O.Ms.No.37 and G.O.Ms.No.116, has been derailed by the Government by the issuance of G.O.Ms.No.95 to the effect that, even those who attained higher qualification prior to 10.03.2020 and submitted application are covered by the new scheme and that they are entitled only to lump sum payment. This exercise goes against the earlier Government Orders.

3.5.He further insisted that, once the policy decision is taken by the Government issuing a Government Order, it is obviously nothing but an executive instruction that will take into effect only prospectively and



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will not have any retrospective effect. That's why when G.O.Ms.No.37 was issued, the petitioners had no grievance since the same came to be applicable prospectively cancelling the advance incentive scheme, but the Government cannot deprive the right, which was already accrued on the petitioners as under the earlier Government Orders, by which they were entitled to advance increment. The right accrued on the petitioners cannot be taken away by using executive instructions. Reiterating that an executive instruction can be issued only with prospective effect and not with retrospective effect, the learned Senior Counsel contended that the impugned G.O., need to be interfered for having taken away the accrued rights of the petitioners, which had accrued on them under the earlier G.O.s, which were issued prior to the issuance of G.O.Ms.No.95.

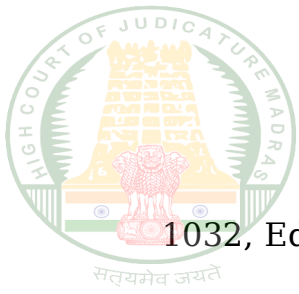
3.6.Per contra, the learned Advocate General Mr.Raman appearing on behalf of the respondents drew my attention to the order passed by this Court in a similar case in W.P.Nos.1605 of 2024, etc, batches, in which this Hon'ble Court, by its order dated 29.01.2024, has refused to interfere with the impugned G.O.Ms.No.95, dated 26.10.2023. He categorically contended that, it is a settled proposition of law that a policy decision by a competent authority would not come within the purview of judicial review. Pointing out that the Courts should resist itself from embarking upon a venture over decision reached on consideration of relevant materials, he further insisted that the policy



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decision can be challenged only on the ground of illegality as being contrary to law or any Constitutional Provision. However, in this case, no such grounds are made out for judicial review and on that basis, pressed for dismissal of Writ Petitions.

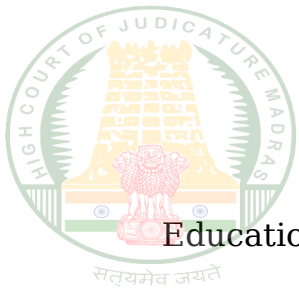
3.7.The learned counsel for the petitioner in W.P.(MD)No.1907 of 2024, Mr.Panneer Selvam submitted that, the history of grant of incentive increment could very well be traced to as early as from 25.04.1963, when the Government had issued a Government Order in G.O.Ms.No.531. It was only by the said Government Order, the scheme of cash rewards came to be introduced by permitting one advance increment for passing the prescribed account test to the non-gazetted government servants in the Ministerial Service with effect from 01.04.1963. Thereafter, the Government periodically continued issuing orders through the Personnel and Administrative Reforms Department, extending the said benefit to the administrative wing as well. However, the said Government Order was not applicable to Teachers. It was only on 10.01.1969, the Government introduced the scheme of incentive increment to the Teachers with a broad vision to motivate the Teachers to acquire higher academic qualification and accordingly, introduced a separate scheme by issuing G.O.Ms.No.42, Education Department and giving effect to the said scheme with effect from 01.07.1968. Subsequently, the Government issued yet another order in G.O.Ms.No.



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1032, Education Department, dated 22.06.1971, by way of clarification to the erstwhile G.O.Ms.No.42, dated 10.01.1969. Further, yet another Government Order in G.O.Ms.No.107, Education Department, dated 20.01.1976, came to be issued for permitting incentive increment to Teachers acquiring higher qualification related to Tamil Pandits. During 1993, two Government Orders in G.O.Ms.Nos.1023 and 1024, Education, Science and Technology Department, came to be issued with respect to admissibility of number of incentive increment to the Teachers. The Government Orders pertaining to incentive increments to Teachers were specifically and separately issued by the Education Department from time to time and all the other orders relating to incentive increment issued by the Government are not applicable to the Teachers, particularly the same are applicable to the ministerial staffs and officials serving in the other departments other than the Education Department.

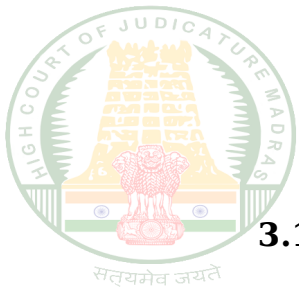
3.8. Accordingly, the orders in the impugned G.O.Ms.No.37, Personnel and Administrative Reforms Department, dated 10.03.2020, G.O.Ms.No.116, Personnel and Administrative Reforms Department, dated 15.10.2020 and G.O.Ms.No.120, Human Resource Management Department, dated 11.11.2021 and G.O.Ms.No.95, Human Resource Management Department, dated 26.10.2023, are not at all applicable to the Teachers. The scheme of incentive increment, which was implemented by the Government of Tamil Nadu, particularly in the



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Education Department, by giving effect to the same from 1st July 1968 to the Teachers is impressible. Therefore, he contended that G.O.Ms.No. 116, Personnel and Administrative Reforms Department, dated 15.10.2020, insofar as para no.4 serial Nos.4 and 5 are arbitrary and the same are liable to be set aside, for the reason that the same has extended the effect of the impugned Government Order in G.O.Ms.No.37, Personnel and Administrative Reforms Department, dated 10.03.2020, to the Education Department as well. He further contended that, the Government has issued yet another impugned Government Order in G.O.Ms.No.95, Human Resource Management Department, dated 26.10.2023, granting lump sum amount by cancelling the scheme of incentive increment. The Government passed an order by fixing the cut off date as 10.03.2020, to sanction the incentive increment for those who have acquired the qualification prior to 10.03.2020. Now, that was also cancelled without any reason and logic.

3.9. Under such circumstances, the cut-off date itself is nothing but an arbitrary exercise and the same has been fixed without any logic. By fixing this cut-off date, the Government is trying to pick and choose among the applicants seeking incentive increment. Therefore, by fixing cut-off date, the Government has arbitrarily taken away the acquired rights of the petitioners and the same is liable to be set aside.



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3.10. Heard the learned counsels for the petitioners, the learned Advocate General for the respondents and anxiously perused the materials available on record.

4. Analysis:-

4.1. The learned Advocate General has brought to the notice of this Court that, a Coordinate Bench of this Court in W.P.Nos.1605 of 2024, etc, batch cases dated 29.01.2024, has tested the validity of G.O.Ms.No. 95, Human Resources Management (FR-IV) Department, dated 26.10.2023 and has upheld the same. However, there is a difference with respect to the Writ Petitions dealt with by me, in these cases, since in a batch of cases, apart from G.O.Ms.No.95, dated 26.10.2023, Clause 6(vi) of G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2022, has also been challenged. **G.O.Ms.No. 37, dated 10.03.2020, dispensed with the scheme of sanction of advance increments to the employees in all the Departments. However, G.O.Ms.No.116, dated 15.10.2020, is a clarification order, clarifying the erstwhile G.O.Ms.No.37, dated 10.03.2020. Subsequent to the same, yet another Government Order in G.O.Ms.No.120, Human Resource Management (FR-IV) Department, dated 11.11.2021, came to be issued providing guidelines for the implementation of G.O.Ms.No.37. Consequently, G.O.Ms.No.95, dated 26.10.2023, came to be issued by providing**



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guidelines with respect to grant of lump sum amount for acquiring additional education qualification instead of grant of incentive increment. Since G.O.Ms.Nos.116, 120 and 95 are consequential orders, which came to be issued by the Government one after the other, only to give effect to G.O.Ms.No.37, dated 10.03.2020, I am of the considered view that it is necessary to deal with the *lis* in hand exclusively by conjointly considering the cause, effect and implications of the aforesaid Government Orders relating to the accrued rights/vested rights, if any, with respect to the petitioners who are all Teachers in various levels.

4.2.As pointed out by the learned counsel appearing for the petitioner, Mr.Paneer Selvam, the Government had introduced the scheme of cash rewards as early as in the year 1963, by grant of one advance increment for the employees possessing/acquiring higher educational qualification. However, the Government Orders pertaining to the Department of Education were exclusively issued by the Education Department with effect from 01.07.1968 as early as by the Government Order in G.O.Ms.No.42, dated 10.01.1969.

4.3.For the sake of convenience, the various Government Orders issued for the various Departments as well as the Department of Education for grant of incentive increment for higher educational



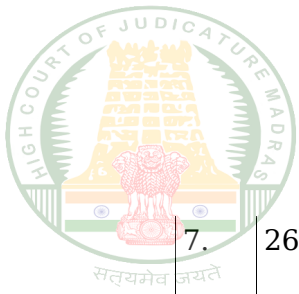
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qualification, are tabulated here under separately:-

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Table I - (General)

S. No.	Date	G.O. Ms.No.	Department	Crux of G.O.
1.	25.04.1963	531	Finance	One advance increment in the scale of pay applicable to Government servants for passing prescribed Account Test, who are non gazetted Government servants in the Ministerial service with effect from 01.04.1963
2.	06.07.1977	825	Personnel Administrative Reforms and	i)Two advance increments sanctioned to Engineering Personnel who hold a Post Graduate Degree in Engineering. ii)Two advance increments sanctioned to employees working in Departments where Management qualification can possibly be utilized, who acquire the Post Graduate Degree of Master of Management Sciences.
3.	27.10.1978	1195	Personnel Administrative Reforms and	Clarifications issued regarding grant of advance increment to Government Officials with Post Graduate Management Degree
4.	10.03.2020	37	Personnel Administrative Reforms and	Dispensation/Cancellation of the scheme of sanction of advance increment in all departments
5.	15.10.2020	116	Personnel Administrative Reforms and	Clarifications regarding dispensation/cancellation of the scheme of sanction of advance increment in all departments
6.	01.11.2021	120	Human Resource Management	Grant of lump sum amount for acquiring additional educational qualification to the State Government employees on or after 10.03.2020



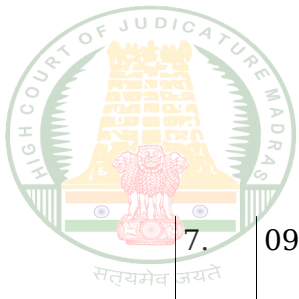
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7.	26.10.2023	95	Human Resource Management	Guidelines for grant of one time lump sum amount for acquiring additional educational qualification to the State Government employees with retrospective effect from 10.03.2020.
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Table II - (Education)

S. No.	Date	G.O. Ms.No.	Department	Crux of G.O.
1.	10.01.1969	42	Education	Two advance increments <i>in the scale of pay</i> to the secondary or senior Basic Grade Teachers, B.T., B.Ed Assistants, Headmasters of Government Board School & Municipal Township Schools, Headmasters Aided High Schools, Pandits I Grade, Pandits II Grade, Physical Training Grade I Instructors and other specialist Teachers if he/she possesses or acquires higher qualification in column no.3 of the table in Annexure to this G.O.
2.	22.06.1971	1032	Education	Clarification to G.O.Ms.No.42 dated 10.01.1969
3.	20.01.1976	107	Education	Grant of incentive increment to Tamil Pandits
4.	18.08.1986	747	Financial Pay Cell	Recommendations of one man Committee with respect to grant of incentive increment for M.Ed qualification
5.	13.07.1992	624	Education	Revised orders for sanction of incentive increment to School Teachers for acquiring higher qualification
6.	09.12.1993	1023	Education, Science & Technology	Admissibility of number of incentive increment to Teachers for acquiring higher educational qualification



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7.	09.12.1993	1024	Education, Science & Technology	Amendment issued with respect to admissibility of number of incentive increment to teachers for acquiring higher educational qualification
8.	20.12.1993	1170	Education, Science & Technology	Orders for sanction of incentive increments to Post Graduate Teachers for possessing higher qualification
9.	25.04.1995	324	Education, Science & Technology	Clarification relating to subjects for which incentive increments be sanctioned
10.	10.10.2006	194	School Education	Revised orders for sanction of incentive increment to Post Graduate Teachers acquiring higher qualification
11.	18.01.2013	18	School Education	Grant of Second incentive increment for acquiring higher educational qualification of M.Ed., M.Phil and Ph.D

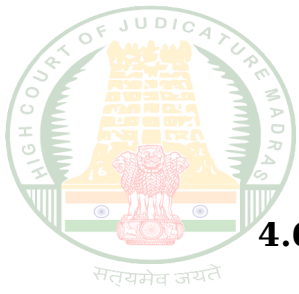
4.4.A quick glance across the above two tables would throw light on the fact that, the Government of Tamil Nadu had from time to time issued various Government Orders with respect to grant of incentive increments/cash rewards to the Government servants for acquiring higher qualification and for passing departmental tests. It can also be understood that, exclusively for the Department of Education way back from 1969, separate Government Orders came to be issued by the Government for sanctioning advance increment to the teachers of various categories for acquiring higher qualification. On the basis of the recommendation of the Madras Pay Commission, a scheme of cash rewards by way of one advance increment for passing the prescribed



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departmental account test came to be introduced at the first instance by G.O.Ms.No.531, Finance Department, dated 25.04.1963. The Government on consultation with the Head of the Departments, including the Director of Treasury and Accounts, on the basis of the recommendation of the Madras Pay Commission directed that one advance increment in the scale of pay applicable to the Government servants should be sanctioned for passing their account test examination and the same was made applicable only to the non-gazetted government servants in the Ministerial Service. The said G.O., had nothing to do with the Teachers serving in the Education Department.

4.5. During the fourth Five Year Plan, the Government approved the proposals of the Director of School Education and directed that advance increment should be given to the Teachers in Schools, who acquire higher educational qualifications. Teachers belonging to eight categories, who shall be eligible for receipt of two advance increments in the scale of pay, for acquiring/possessing higher qualification as specified in the annexure to the Government Order in G.O.Ms.No.42, Education Department, dated 10.01.1969 were identified. The said G.O., was given effect to from 01.07.1968 and those persons entering on or after 1st July 1968, possessing the higher qualification, their initial pay came to be fixed by giving advance increments in their scale of pay.



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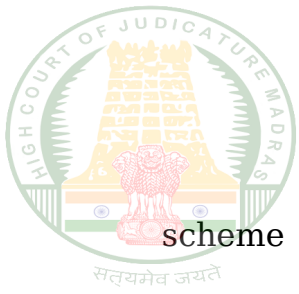
4.6. Thereafter, several clarifications, modifications and guidelines came to be issued by the Government in the Department of Education from time to time for grant of incentive increment to the Teachers of various categories serving in the Government as well as Aided Schools in the State of Tamil Nadu. This is not the first time when the Government had taken a policy decision, to replace the scheme of grant of advance increment/incentive increments, in the scale of pay of the Government employees for acquiring additional qualification, with sanction of lump sum grant. The Government during 1983, issued the Government Order in G.O.Ms.No.843, Personnel and Administrative Reforms (F-II) Department, dated 05.09.1983 and issued a consolidated order for sanction of lump sum grant, instead of advance increments in the scale of pay for acquiring some of the specialized courses in PG/PhD/MBA, etc, in the Departments of Agriculture, Agricultural Engineering, Dairy Development, Animal Husbandry, Health and Family Welfare, Home and Personnel and Administrative Reforms Department, subject to fulfillment of certain conditions stipulated in the said Government Order. However, later the said scheme of lump sum grant was again replaced with sanction of advance increments by issuance of Government Order in G.O.Ms.No.1159, Personnel and Administrative Reforms (FR-II) Department, dated 21.11.1984. The real intention of the incentive scheme as envisaged in the annexure to G.O.Ms.No.42, School Education Department, dated 10.01.1969, is to sanction two incentive increments,



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that is, four advance increments only, to a Teacher for acquiring higher qualification. The Government vide G.O.Ms.No.1024, Education, Science and Technology Department, dated 09.12.1993, clearly indicated that the maximum number of advance increments, which a Teacher could get under the scheme of incentive increments shall be four in his/her entire carrier. Thus, the total number of incentive increments in the scale of pay of a Teacher, came to be sealed by the Government as two incentive increments, that is, four advance increments during their entire carrier as Teacher (one incentive increment is equal to two advance increments). The said position was clarified by the Government in G.O.Ms.No.285, School Education Department, dated 28.11.2007.

4.7.It is pertinent to point out at this point that, even during 1983 and 1984, the scheme of grant of incentive increment to the Teachers was not replaced at any point of time with sanction of lump sum grant. Thus, from 01.07.1968, the scheme of incentive payments to Teachers in their scale of pay came to be implemented by the Government of Tamil Nadu without deviation, however, subject to certain modifications/conditions, till the issuance of Government Order in G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020. Clause 6(VI) of G.O.Ms.No.37, dated 10.03.2020, has been impugned in few of the Writ Petitions before me. By way of G.O.Ms.No.37, the Government has dispensed/cancelled the



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scheme of sanction of advance increments in all Departments. The evolution of the scheme of sanction of advance increment to the government employees of the various Departments has been elaborately narrated by this Court in a similar case in **W.P.Nos.1605 of 2024, batch, dated 29.01.2024** and the relevant portion of the same is extracted as follows:-

“12. The evolution of the scheme of sanction of advance increment clearly indicates the following aspects:~

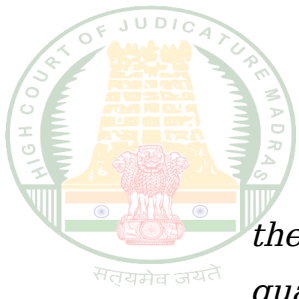
a) During the period of introduction of above scheme, qualified persons are rarely identified for Government Posts. But, in present days, highly qualified persons including many professionals (Doctors and Engineers) are entering Government Service through the concerned recruiting agencies for Group A and B Posts and even for Group C posts like Assistants / Junior Assistants/Typists etc. to do clerical jobs.

b) During this period of more than half century from 1960-s. Educational Institutions / Colleges have increased numerously and the qualified candidates are also increased multifold.

c) Various recruiting agencies are selecting qualified persons suitable for the various posts in Government Service after conducting the tests / examinations at various stages.

d) Qualified persons are available in all the fields to fill up the higher promotional post in order to discharge duty of the post efficiently.

e) If a Government Servant needs promotion / appointment to a higher post which carries higher qualification

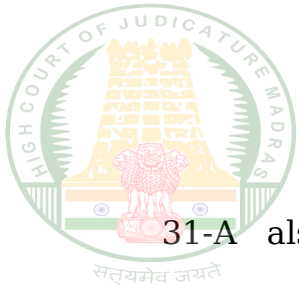


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then it is the responsibility of the Government Servant to qualify himself / herself for promotion / appointment to that higher post."

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4.8. During the period of introduction of the scheme of grant of incentive increment to the Teachers before 6 decades, qualified persons were rarely identified to the various Government posts. However, in the present era, where highly qualified persons including professionals are entering into Government service through concerned recruiting agencies for group A, B and even C posts and when the qualified candidates have increased multifold, the Government felt that, the scheme of grant of incentive increment for acquiring/possessing higher educational qualification do not serve any purpose. On this premise, in such background, the Government introduced G.O.Ms.No.37, dated 10.03.2020, dispensing/cancelling the scheme of advance increment to Government servants for acquiring higher qualification and for passing departmental tests. By issuance of the said G.O., various G.O.s dealing with the grant of incentive increments including G.O.Ms.No.843, dated 05.09.1983, G.O.Ms.No.1159, dated 21.11.1984, G.O.Ms.No.301, dated 26.03.1985 and G.O.Ms.No.97, dated 05.07.2010, issued by the Personnel and Administrative (FR-II) Department, came to be cancelled. The sanction of advance increment for passing account test for Subordinate Officers-Part-1 as per Rule 3 and 4 under Fundamental Rule



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31-A also came to be dispensed with immediate effect. All the Departments were directed to take up a review on this issue with reference to the special/ad hoc Rules of the posts (entry to higher level) of the Department concerned and to prescribe higher qualification to the post wherever necessarily required, so as to improve the services of the Department concerned.

4.9.The petitioners in the *lis* in hand are Teachers of various categories serving under the School Education Department. Though the said G.O.Ms.No.37, dispensed the scheme of grant of incentive increment to the employees of all Departments, the Government proceeded to issue yet another G.O.Ms.No.116, dated 15.10.2020, through its Personnel and Administrative Reforms (FR-IV) Department, issuing certain clarifications with respect to G.O.Ms.No.37, dated 10.03.2020. The relevant points raised for clarifications and the clarification issued by the Government in para no.4 of the said G.O. in Serial Nos.4, 5, 7 are applicable to the facts of this case and the same are extracted as follows:-

S. No.	Points raised for clarification	Clarification issued
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4.	Whether the dispensing/cancellation of advance increment in all Departments issued in the Government Order 1 st read above is applicable to the Teachers also?	Yes. The general orders issued in the Government Order 1 st read above is invariably applicable to all Government servants in all Departments under the control of Government of Tamil Nadu including Teachers, Engineers, Doctors, Professors, Legal Practitioners, etc.
5.	(a)Whether the incentive increment granted to the Teachers for acquiring higher qualification is cancelled/dispensed because, in the Government Order 1 st Read above it has been mentioned only as advance increment for acquiring higher qualification is cancelled/dispensed? (b)Whether the terms advance increment and incentive increment sanctioned to Teachers are one and the same.	Yes. As per orders issued in G.O.Ms.No.42, Education Department, dated 10.01.1969 read with G.O.Ms.No.1024, Education, Science and Technology Department, dated 09.12.1993, it is clarified that whatever the terms (either incentive increment or advance increment) used in different Government Orders issued with respect to this subject by various Departments it indicates the same thing. (I.e.) incentive increment and advance increment are same.
7.	Whether the Government servants who have acquired higher qualification prior to issue of the Government Order 1 st read above and not sanctioned with advance increment /not applied for sanction of advance increment by the Government servants are eligible for sanction of advance increment?	The cases of Government servants who have acquired higher qualification prior to the date of issue of the Government order 1 st read above and not sanctioned with advance increment / not applied for sanction of advance increment by the Government servant concerned may be examined separately as per para 6(vi) of the Government Order 1 st read above and appropriate orders to be issued before 31.03.2021.

It is necessary to make a mention here that, clarification in S.No.5 of para no.4 of G.O.Ms.No.116, clarifying, that the terms advance increment and incentive increments sanctioned to teachers are one and the same, is absolutely a mistaken interpretation. Time and again, it has



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been held by this Court in various cases, that, one incentive increment is equal to two advance increments. If the term “incentive increment” is the genus, the term “advance increment” would be its species.

4.10. While so, yet another Government Order in G.O.Ms.No.120, Human Resource Management Department, dated 01.11.2021, came to be issued providing guidelines as to the grant of lump sum payment for acquiring higher education qualification, which provides for grant of lump sum payments to a maximum of two such payments, for those who are acquiring higher education qualification on or after 10.03.2020. A conjoint reading of G.O.Ms.Nos.37, 116 and 120 has given rise to the following state of affairs:-

(1)A policy decision by which the scheme of sanction of advance increment for acquiring higher qualification in all departments, came to be cancelled as a whole/dispensed with immediate effect.

(2)All orders issued by all Departments for sanction of advance increment for possessing higher qualification as a whole came to be cancelled/dispensed with immediate effect.

(3)The sanction of advance increment for passing account test for Subordinate Officers-Part 1 is dispensed with immediate effect and necessary amendment in Clause 3 and 4 of Fundamental Rules 31-A to be effected separately.

(4)The cases of government servants, who have acquired higher qualification prior to issue of G.O.Ms.No.37 and not sanctioned with advance increments, to be examined separately



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in terms of the previous orders issued, if any, by the Administrative Department concerned and with reference to the post specified in that order and such advance increment may be sanctioned by the Administrative Department concerned, after obtaining concurrence of the Finance Department.

(5) If no previous orders were issued by any of the Department concerned, then such employees are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degree acquired.

(6) The general order issued in G.O.Ms.No.37, is invariably applicable to all Government servants in all Departments under the Government of Tamil Nadu including Teachers, Engineers, Doctors, Professors, Legal Practitioners, etc.

(7) As per orders issued in G.O.Ms.No.42, Education Department, dated 10.01.1969, read with G.O.Ms.No.1024, Education, Science and Technology Department, dated 09.12.1993, the term used as advance increment is equivalent to incentive increment and would be covered by G.O.Ms.No.37, dated 10.03.2020.

(8) The cases of government servants, who have acquired higher qualification prior to the date of issue of G.O.Ms.No.37 and not sanctioned with advance increment/not applied for sanction of advance increment by the government servant concerned, to be examined separately as per Clause No.6(vi) of the government order in G.O.Ms.No.37 and appropriate orders to be issued before 31.03.2021.

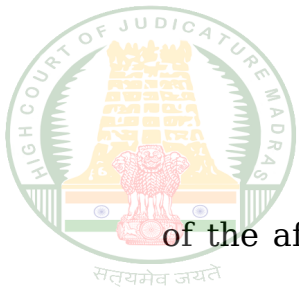
(9) A new policy decision introducing a scheme of grant of lump sum payment to the employees for possessing/acquiring higher qualification on or after 10.03.2020, came to be introduced.



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4.11. Having issued G.O.Ms.No.37, dated 10.03.2020 and thereafter, having issued G.O.Ms.No.116, dated 15.10.2020, issuing certain clarifications for the aforesaid G.O., and thereafter, having issued G.O.Ms.No.120, dated 01.11.2021, introducing the scheme of lump sum payment to the employees acquiring higher education qualification on or after 10.03.2020, fully inconsistent to the mandates of all these three government orders, the Government further proceeded to issue G.O.Ms.No.95, Human Resources Management (FR-IV) Department dated 26.10.2023, in the guise of issuing guidelines for grant of lump sum amount for acquiring additional education qualification to the State Government employees. Though the Government cancelled/dispensed the grant of incentive increment to the employees of all Departments for acquiring higher education qualification by issuance of G.O.Ms.No.37 dated 10.03.2020, by issuing G.O.Ms.No.116 dated 15.10.2020, clarifying that Teachers will also be covered under the mandate of G.O.Ms.No.37, by issuance of G.O.Ms.No.116, the Government further protected the right of those Teachers, who have acquired higher education qualification before 10.03.2020, that is, (i) those Teachers who have acquired higher education qualification prior to 10.03.2020 and have made applications and (ii) those who have acquired higher qualification prior to 10.03.2020 and have not made applications for sanction of advance increment. It was made clear that, appropriate orders in respect



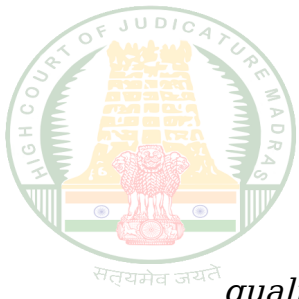
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of the aforesaid two categories of Teachers would be issued in terms of the previous orders issued by the Department of Education before 31.03.2021. However, having not issued appropriate orders before 31.03.2021, the Government proceeded to announce lump sum payment for those candidates who have acquired higher education qualification on or after 10.03.2020, vide Government Order in G.O.Ms.No.120 dated 01.11.2021, following which, the impugned Government Order in G.O.Ms.No.95, dated 26.10.2023, came to be issued by the Government cancelling the benefit of incentive increments to those Teachers, who have acquired higher education qualification before 10.03.2020 and have/have not made applications as on 10.03.2020.

4.12.The cry of the petitioners is that, in the name of harmonization, the Government Order in G.O.Ms.No.95, which is inconsistent to the erstwhile G.O.Ms.Nos.37, 116 and 120 came to be issued. The issuance of the said G.O., impugned herein has given rise to a situation of treating equally placed teachers unequally. To elaborate the same, the Teachers can be grouped as follows:-

I. Teachers who have received two incentive increments in their scale of pay for having acquired higher education qualification before 10.03.2020.

II. Teachers who have acquired higher education qualification before 10.03.2020 and have made applications for grant of incentive increment but not sanctioned with the same.



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III. Teachers who have acquired higher education qualification before 10.03.2020 and have not yet made applications for grant of incentive increment.

IV. Teachers who have acquired higher education qualification on or after 10.03.2020.

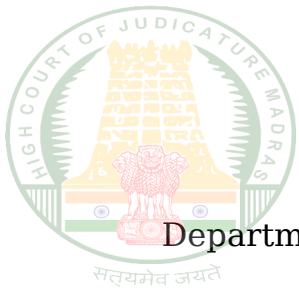
4.13.On 10.01.1969, the Government vide G.O.Ms.No.42, Education Department, decided grant of two advance increments in the scale of pay to the Teachers at the first instance. The said decision was given effect to from 01.07.1968. Thereafter, from time to time by issuance of various Government Orders, the grant of incentive increments in the scale of pay to the Teachers of various categories came to be issued, on application being made by the teachers who possessed/acquired higher education qualification after verification of the qualification acquired by the applicants concerned. For the first time as far as Education Department is concerned, the Government took a deviation in the grant of incentive increment in the scale of pay of the Teachers by the issuance of G.O.Ms.No.37, Personnel and Administrative Reforms Department, dated 10.03.2020. Since the same came to be issued by the Personnel and Administrative Reforms Department, dispensing/cancelling the award of incentive increment in the scale of pay of the employees of all departments as a general order, a query was raised from various quarters as to which are the specific Departments to which the said G.O., is applicable. Clause 6(vi) of the said G.O. made it



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clear that the same is applicable to all those Departments where previous orders with respect to incentive increment/advance increments for passing higher qualification irrespective of the post held/degree acquired has been issued. Obviously, in the Department of Education way back from 1969, commencing from G.O.Ms.No.42, dated 10.01.1969, as many as Government Orders as tabulated in Table-II (Education) of para no.4.3 supra came to be issued by the Government during various period of time. Thus, the right to receive incentive increment flows not from any Service Rule/Act pertaining to the service of the Teachers, but the same flows from the various Government Orders commencing from G.O.Ms.No. 42, dated 10.01.1969. The said benefit has accrued upon the Teachers from time to time since 10.01.1969, on possessing/acquiring higher education qualification during their service. However, the same came to be dispensed by the import of G.O.Ms.No.37, dated 10.03.2020. It is needless to state that the Government Orders issued by the State Government are nothing but executive instructions issued under Article 162 of the Constitution of India and the same cannot have the force of a statutory rule.

4.14.The award of incentive increment in the scale of pay of the employees of various departments came to be implemented by the State Government from time to time as a policy decision of the Government. Incentive is provided by the Government to the employees of the various



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Departments as a concession, apart from the yearly increment. Hence, such incentive increments implanted in their scale of pay would also be taken into consideration for the purpose of pension after superannuation. The very idea behind the grant of incentive increments on acquiring higher education qualification to the Teachers is exclusively for the purpose of providing qualitative education catering to the needs of the student community.

4.15.As far as the instant case is concerned, the Administrative Department concerned is the Education Department. It is needless to state that right from 1969, vide G.O.Ms.No.42, Education Department, dated 10.01.1969, the Government had commenced and implemented the policy of grant of incentive increments, that is, two incentive increments (four advance increments) to the Teachers of various categories during their entire career. Accordingly, those Teachers who have acquired higher qualification prior to 10.03.2020 and have made applications for grant of incentive increment by the Government and those who have acquired higher qualification prior to 10.03.2020 and have not made applications for grant of incentive increment to the Government, are entitled to be sanctioned with advance increments in terms of the various Government Orders issued by the School Education Department from time to time, particularly the Government Orders extracted in Table-II (Education). The Government of Tamil Nadu issued G.O.Ms.No.120,



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Human Resource Management Department, dated 01.11.2021, with guidelines for granting a lump sum amount for its employees who acquire additional educational qualifications, while in service. The amounts are: Rs.25,000/- for a Doctorate, Rs.20,000/- for a Post Graduate Degree or equivalent and Rs.10,000/- for a Degree/Diploma on or after 10.03.2020. Hence, a conjoint reading of G.O.Ms.Nos.37, 116 and 120, would make it palpable that, all those employees who have acquired higher educational qualifications before 10.03.2020, are entitled to receive grant of incentive increments in their scale of pay and that those who acquire higher educational qualification on or after 10.03.2020, are entitled to receive lump sum award in terms of para no.3 of G.O.Ms.No.120 dated 01.11.2021. That apart, based on the orders issued in G.O.Ms.No.116, dated 15.10.2020, the cut-off date for granting advance increment who have acquired higher educational qualification prior to 10.03.2020, was also extended from 10.03.2020 to 31.03.2021.

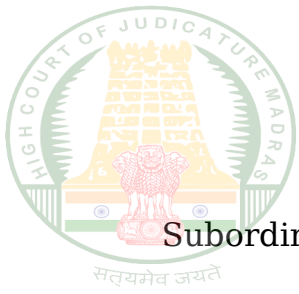
4.16. However, without issuing appropriate orders before 31.03.2021 with respect to the Teachers, who have acquired additional educational qualification before 10.03.2020 and have/have not made Applications seeking grant of advance increment from the Government before 31.03.2021, in terms of G.O.Ms.No.116, the Government further proceeded to issue yet another impugned order in G.O.Ms.No.95, Human Resources Management Department, dated 26.10.2023, issuing



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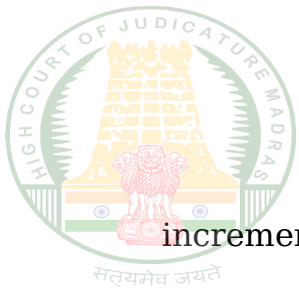
guidelines as to the grant of lump sum amount for acquiring additional education qualification to the State Government employees. Without issuing appropriate orders with respect to the grant of incentive increments for those employees who have acquired higher educational qualification before 10.03.2020, the Government noticing that substantial number of claims which are pending from candidates with higher educational qualification, for the purpose of expediting the process, by way of partial modification to the Orders issued in G.O.Ms.Nos.116 and 120, finalized that the cut-off date for sanction of advance increments for having acquired higher educational qualifications ended and the new scheme of sanction of lump sum amount is ordered to take effect from 10.03.2020. Thus, in the name of harmonizing the clarification issued in G.O.Ms.No.116, it was informed by way of the said Government Order that all the pending applications as on 10.03.2020 and future claims for sanction of incentive increment for having acquired higher educational qualifications shall be disposed of as per the new scheme of granting lump sum incentives only and not by the earlier scheme of granting increments in salary.

4.17.The Secondary Grade Teachers and BT Assistants are governed by the Special Rules for Tamil Nadu Elementary Education Subordinate Service Rules, whereas, the PG Assistants are governed by the Special Rules for Tamil Nadu Higher Secondary Education



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Subordinate Service Rules. Thus, the benefit of incentive increment for acquiring higher education qualification do not flow from these Rules, but the same has emanated from the various Government Orders issued by the Government during various period of time from 1969. Thus, the right to seek grant of incentive increment from the Government for having acquired higher educational qualification do not flow from the respective Statutory Rules, which govern the service conditions of the Teachers of various categories, but the same has emanated from the Government Orders, which are nothing but executive orders issued under Article 162 of the Constitution of India, which came to be issued by the Government of Tamil Nadu since 1969 from time to time as a policy decision. It is needless to state that a Government servant has no vested right in the terms and conditions of his service and the said terms can be altered with retrospective effect by the Rules made under the proviso to Article 309 of the Constitution of India. The relationship between a Government employee and that of the Government is in the nature of status rather than contractual and hence, the conditions of his service would be governed by the relevant Statutory Rules which may be unilaterally altered without the consent of the employees. In the instant *lis* in hand, though the relevant Statutory Rules are silent as to the grant of incentive increments to the Teachers, the Government as a policy measure provided incentive increments in the scale of pay of teachers as a concession. Such a policy measure has resulted in grant of incentive



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increment to the Teachers of various categories from time to time with effect from 01.07.1968, by the issuance of several Government Orders as narrated elaborately supra. Hence, a policy shift in the Government by all of a sudden dispensing/cancelling the grant of incentive increment for acquiring higher qualification by the issuance of G.O.Ms.No.37 with effect from 10.03.2020, has opened up a pandora's box popping up several critical questions as follows:-

"I. Whether the shift in policy by issuance of G.O.Ms.No.95, in the name of harmonizing the Government Orders in G.O.Ms.Nos.37, 116 and 120 have given rise to a situation of treating unequals equally?

II. Equals Unequally?

III. Whether the impugned government order deprived the right which has already accrued on the teachers as under the earlier Government Orders ensuring grant of two incentive increments, that is, four advance increments during the entire career of a Teacher for acquiring higher educational qualification?

IV. Whether the impugned government order dated 26.10.2023, be made applicable with retrospective effect?

V. Whether para 6(vi) of G.O.Ms.No.37, dated 10.03.2020, is discriminative?"



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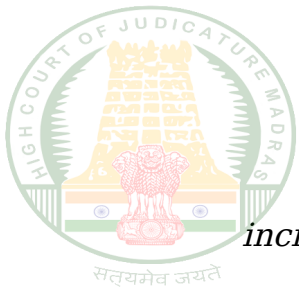
5. Whether the shift in policy by issuance of G.O.Ms.No.95, in the name of harmonizing the Government Orders in G.O.Ms.Nos.37, 116 and 120 has given rise to a situation of treating unequals equally?

5.1. Whenever a sanctioned post is created in any Department, a definite scale of pay is attached to the said post. The Government issued Order in G.O.Ms.No.531, Finance Department, dated 25.04.1963, introducing one advance increment for the passing of prescribed account test in the scale of pay applicable to the government servants to the employees of non gazetted Government service particularly the Ministerial Service. However, the said right of receipt of advance increment for passing account test flows not only from the said G.O., but also from the relevant statutory Rules, that is, the Fundamental Rules, more particularly, Rulings 10 and 11 under FR27 and rulings 4 under FR31-A.

5.2. For better clarity, the relevant Rules are extracted as follows:-

“F.R.27 - Rulings (10). *The advance increment to Government servants for passing the Account Test for Subordinate Officers, Part I may be sanctioned by the authority which normally sanctions increment to them.*

F.R.27 - Rulings (11). *The period between the date of previous increment in a time-scale and the date of sanction of the advance increment for passing the Account Test of Subordinate Officers, Part I shall count for subsequent*



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increments in that time-scales.

F.R.31-A - Rulings (3). *When the Account Test for Subordinate Officers, Part-I is prescribed to be passed within the period of probation, in the service rules, the advance increment granted to probationers for passing the test will not be brought within the purview of the rule.*

F.R.31-A - Rulings (4). *Where the Account Test for Subordinate Officers, Part-I is not prescribed as a condition, but is required to be passed either for continuance in that post or for promotion to a higher post, the advance increment should be allowed from the day following the last day of the test irrespective of whether the test is passed within or after the period of probation."*

5.3. Hence, without amending the aforesaid Fundamental Rules, the Government shall not make a policy shift and also cannot take away the accrued right of advance increment in the scale of pay for passing account test examination as far as the non-gazetted government servants in Ministerial Service is concerned, by issuance of a Government Order, which is nothing but an executive instruction which cannot override a Statutory Rule. But the litigants before me are not the non-gazetted government employees in Ministerial Service, but the Teachers of various categories.

5.4. As far as the case of teachers are concerned, the grant of incentive increment in their scale of pay for acquiring higher educational



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qualification came to be awarded by the Government, as a policy decision by issuance of various G.O.s. Earlier, the Government by an Order in G.O.Ms.No.843, Personnel and Administrative Reforms Department, dated 05.09.1983, had issued a consolidated order for sanction of lump sum grant instead of advance increments for acquiring some specialized courses in PG/PhD/MBA, etc, in the Departments, namely, Agricultural Department, Agricultural Engineering, Dairy Development Department, Animal Husbandry Department, Health and Family Welfare Department, Home Department and Personnel and Administrative Reforms Department citing the reason that, the scheme of grant of incentive increment for acquiring higher educational qualification has created disparity among employees who perform the same work in the same cadre in their scale of pay on certain employees acquiring higher education qualification. However, the said G.O. was later replaced with sanction of advance increment by Government Order in G.O.Ms.No.1159, Personnel and Administrative Reforms Department dated 21.11.1984. However, such a deviation was not taken in the case of Teachers and continuously since 01.07.1968, the Teachers are granted with two incentive increments, that is, four advance increments in their scale of pay on acquiring higher education qualification till 10.03.2020, that is, the date of issuance of the G.O.Ms.No. 37. As already discussed the conditions of service of the various categories of Teachers including Secondary Grade Teachers, BT Assistants, PG Assistants, etc, are

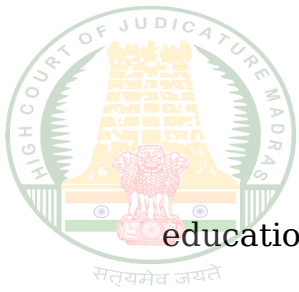


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governed by their relevant/respective Statutory Act/Rules of service.

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5.5.All the Teachers perform the job of teaching the students for which they are sanctioned with a definite scale of pay with yearly increment as prescribed by their relevant service rules, from the date of approval of their appointment. However, the scheme of grant of incentive increment in their scale of pay for acquiring/possessing higher educational qualification has given rise to two class of Teachers with different scale of pay for doing the same duty of teaching the students of the respective level only because of the reason that, one set of Teachers are rewarded with an incentive increment for acquiring higher educational qualification in their scale of pay. Though the scheme of grant of incentive increment in the scale of pay has continuously given rise to, two classes of Teachers rendering the same service of teaching students drawing different scale of pay by grant of incentive increment in the scale of pay for those Teachers who possess/acquire higher educational qualification while in service, the same came to be implemented as a policy decision of the Government rewarding those Teachers encouraging them to acquire higher education qualification benefiting the student community. Once a teacher acquire a higher educational qualification, the effect of the policy decision of granting incentive increment would confirm the employment status of the teacher to a better footing than those teachers who have not acquired higher



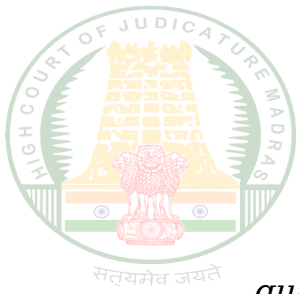
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educational qualification, making them eligible to receive the reward announced by the Government. The award of the concession in the form of incentive increment as a reward given to the teachers, who have acquired higher education is a value adding measure in imparting education to the student community.

5.6. Under Article 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment. Article 16 of the Constitution is only an extension of the doctrine of equality enshrined in Article 14. Therefore, it is needless to state that, there can be reasonable classification of the employees for the purpose of grant of incentive rewards. The Hon'ble Apex Court in the case of ***Shyam Babu Verma and others v. Union of India and others*** reported in ***MANU/SC/0654/1994***, in a similar case, has held as follow:-

“... The nature of work may be more or less same, but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner”.

5.7. In yet another case in ***Director of Elementary Education, Odisha and Others v. Pramod Kumar Sahoo***, reported in ***MANU/SC/1329/2019***, the Hon'ble Apex Court while dealing with a case of Trained and untrained Matric Teachers, has observed as follows:-



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“12.... The classification based upon educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification is a valid classification.”

5.8.When a valid classification based on educational qualification for the purpose of grant of pay itself has been time and again upheld by the Highest Court of the country, the instant case is one where a class of teachers who acquire higher qualification are provided with a reward of incentive increment in their scale of pay. In view of the same, between the two classes of teachers, that is, (i)who have acquired higher educational qualification and (ii)those who have not acquired higher educational qualification, if the first category is denied with incentive increment by retrospectively giving effect to the impugned G.O.Ms.No. 95, dated 26.10.2023, thereby granting them lump sum payment, the same would give way for unequals being treated equally. No doubt, the quantum of intelligence quotient which could be instilled in students by a Teacher with higher qualification would be more adept, than that which could be imparted by those Teachers with minimum required qualification, as such both the categories cannot be treated palatable in a single plate.

6.Equals Unequally?

6.1.All those Teachers who acquired higher educational

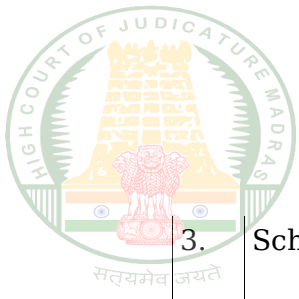


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qualification before 10.03.2020 and have duly applied and sanctioned with two incentive increments in their scale of pay would draw a monthly pay which is definitely higher than the pay drawn by those Teachers who have not acquired higher educational qualification. Similarly, all those Teachers who have acquired higher educational qualification before 10.03.2020, but not sanctioned with incentive increments for acquiring higher educational qualification would draw lesser scale of pay than those who were sanctioned with incentive increments for acquiring higher educational qualification. Thus, among those Teachers who have acquired higher educational qualification before 10.03.2020 and not sanctioned with incentive increment, if the import of impugned G.O.Ms.No.95, dated 26.10.2023, in the name of harmonizing the Government Orders in G.O.Ms.Nos.37, 116 and 120, dispenses/cancels the grant of incentive increment to the Teachers, who have acquired higher educational qualification before 10.03.2023, the same would give way to a disparity in the scale of pay drawn by such two categories of Teachers. This results in equals being treated unequally.

An Illustration:-

S. No.	Details	Teacher who was granted incentive increment for acquiring higher qualification before 10.03.2020	Teacher who was not granted incentive increment for acquiring higher qualification before 10.03.2020
1.	Name of the Teacher	A.Shanthi	T.Arockiyasamy
2.	Post	Primary School Headmaster	Primary School Headmaster



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3.	School	Panchayat Union Primary School, Siruvelangudi, Kalayarkovil Union	Panchayat Union Primary School, Vembapani, Kalayarkovil Union
4.	Date of Birth	15.01.1968	07.02.1965
5.	Date of first appointment	07.10.1996	07.10.1996
6.	Date of appointment in the present post	16.09.2004	16.09.2004
7.	Basic educational qualification	+2, DTED, Blit (Tam), B.Ed	+2, DTED, Blit (Tam), B.Ed
8.	Acquired Higher qualification details	M.A.Tamil	M.A.Tamil
9.	Details of prior permission obtained from the Department	Prior permission obtained from the Department	Prior permission obtained from the Department
10.	Incentive entitlement as per Government order	G.O.Ms.No.42, dated 10.01.1969, G.O.Ms.No.1023 dated 09.12.1993	G.O.Ms.No.42, dated 10.01.1969, G.O.Ms.No.1023 dated 09.12.1993
11.	Details of the institution from which higher qualification is obtained with subject, year, month	Thanjavur Tamil University M.A. Tamil 2019 May	Thanjavur Tamil University M.A.Tamil 2019 May
12.	Last date of examination of the Higher qualification/ degree	20.05.2019	20.05.2019
13.	Incentive increment to be granted with effect from	21.05.2019	21.05.2019



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14.	Details of the incentive increment granted	Granted incentive increment after getting the genuineness certificate from the University	Due to delay in issuance of genuineness certificate from the University incentive increment not granted within 10.03.2020
15.	The pay scale prior to the date of grant of incentive increment	Rs.69,500/- (L.No.15.C.No.23)	Rs.69,500/-(L.No.15.C.No.23)
16.	The quantum of incentive increment to be granted	1.Rs.2100/- 2.Rs.2100/-	
17.	The pay refixed after granting incentive increment after 21.05.2019	Rs.73,700/- (L.No.02 C.No.25)	Rs.69,500/-
18.	Details of annual increment and refixation	01.07.2019-Rs.75,900/- 01.07.2020-Rs.78,200/- 01.07.2021-Rs.80,500/- 01.07.2022-Rs.82,900/- 01.07.2023-Rs.85,400/-	01.07.2019-Rs.71,600/- 01.07.2020-Rs.73,700/- 01.07.2021-Rs.75,900/- 01.07.2022-Rs.78,200/- 01.07.2023-Rs.80,500/-
19.	Monetary loss due to not granting incentive increment per year		Rs.50,400/-

6.2.The Hon'ble Apex Court in the case of ***Union of India and Others v. Rajib Khan and Others in Civil Appeal No.172 of 2023 @ S.L.P.(Civil) No.8083 of 2022***, dated 16.01.2023, has dealt with a case of claim of nursing allowance by Nursing Assistants on par with the Staff Nurse possessing higher qualification and has held that Nursing Assistants who have undergone one year course, shall not be entitled to



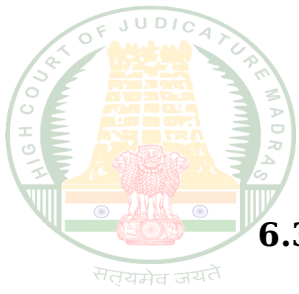
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Nursing Allowance at par with Staff Nurse who have undergone four years course and the relevant portion of the same is extracted as follows:-

“4.2.....In the case before this Court, this Court upheld the different pay scales/pay structure based on different educational qualifications. It is observed and held that considering the educational qualifications prescribed for appointment to the post of Data Entry Operators, Grade B and the order assigning duties, the classification of Data Entry Operators in different grades, does not violate any right of equality guaranteed by Articles 14 and 16 of the Constitution nor does it violate the constitutional protection against hostile or arbitrary discrimination.

4.3 In the case of Punjab State Cooperative Milk Producers Federation Limited (supra), it is observed and held by this Court that different educational qualification and experience prescribed for appointment can be a ground to have different pay scales/pay structures.

4.4 In the case of Pramod Kumar Sahoo (supra) it is observed and held that nature of work may be more or less the same but the scale of pay may vary based on academic qualification or experience which justifies classification. It is further held and observed that inequality of men in different groups excludes applicability of the principle of ‘equal pay for equal work’ to them. In the case before this Court, this Court upheld the classification based upon the higher educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification.”



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6.3. Thus Teachers who have acquired higher qualification before 10.03.2020, if treated differently by refusing grant of incentive increment on the basis of policy shift retrospectively would obviously give rise to equally placed Teachers being treated unequally, resulting in invidious discrimination between two sets of similarly placed Teachers in the matter of grant of incentive increment. Time and again, the various courts of this land have held that, equal treatment should be accorded to similarly placed persons without any discrimination as the fundamental rights guaranteed under the Constitution of India and the law of Courts are bound to protect the same.

7. Whether the impugned government order deprived the right which has already accrued on the teachers as under the earlier Government Orders ensuring grant of two incentive increments, that is, four advance increments during the entire career of a Teacher for acquiring higher educational qualification?

I have already made it clear that, teachers were awarded with incentive increment not by the strength of any statutory service rules governing their condition of service, but the same has been granted by the Government as a policy decision only as a concession from time to time since 01.07.1968, till the issuance of G.O.Ms.No.37, dated 10.03.2020, by which the scheme of award of incentive increment came to be dispensed/cancelled. When the nature of the Government



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employment as Teachers is one of status governed by statutory rules, the rights and obligation of the Government employees particularly the Teachers in this case, are always governed by the statutory rules framed from time to time by the Government and do not give rise to any kind of vested/accrued rights to the teachers. Fixation of pay and determination of parity in duties and responsibilities is a complex matter, which is for the executive to discharge. While taking a decision as to grant of incentives, the Government is certainly entitled to keep in view the prevailing financial position and the capacity of the State Government to bear the additional liability of awarding incentive increment for acquiring higher educational qualification to every Teacher from time to time in the scale of pay. Hence, ordinarily the Courts cannot delve deep into administrative decisions pertaining to pay fixation and grant of incentive in the scale of pay. Therefore, the Government is given the utmost latitude in taking policy decisions and it is only when there is a palpable abuse of power which defeats the object/purpose of the implementation of a particular scheme, necessity of judicial interference arises. However, in the instant case, though the grant of incentive increment in the scale of pay has been dispensed/cancelled by the Government by the issuance of G.O.Ms.No.37, dated 10.03.2020, the same has been replaced by G.O.Ms.No.120, by introducing a scheme of lump sum reward for acquiring higher educational qualification with a consequent impugned G.O.Ms.No.95, by issuing guidelines for the same. Thus, the earlier policy



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decision with respect to grant of incentive increment for acquiring higher educational qualification in the scale of pay as a concession, if dispensed/cancelled by a policy shift in the Government by issuance of yet another G.O. by grant of lump sum reward, the same will not deprive the teachers with any of the rights which would accrue on them, since the said benefit of incentive increment in the scale of pay came to be awarded not as a matter of right but as a matter of reward and encouragement.

8. Whether the impugned government order dated 26.10.2023, be made applicable with retrospective effect ?

8.1. In the backdrop of a welfare State, a concession by way of grant of incentive increment in the scale of pay for acquiring higher educational qualification came to be awarded as a reward to the deserving employees who have acquired higher educational qualification and the said benefit is intended to encourage the employees who go on to complete higher education qualification with greater propensity for intelligence, aimed at fine tuning their professional skills towards rendering qualitative service in their employment.

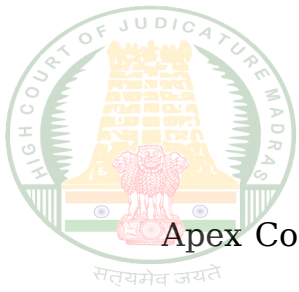
8.2. In this case, the petitioners are Teachers who are serving in the Government Schools/Private Aided Schools, mostly the destinations where the students hail from the middle class and lower middle class



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pursuing their basic education. That is why, the Government of Tamil Nadu had continuously encouraged the Teachers to acquire higher educational qualification without any deviation from 01.07.1968, even though there had been a deviation in policy with respect to the other Departments during the year 1983, by issuance of G.O.Ms.No.843, replacing the scheme of incentive increment with lump sum reward. However, in the Department of Education, the Government had never deviated encouraging the Teachers from acquiring higher educational qualification since 01.08.1968. The reason behind it, is that, the Teachers of the Government educational institutions are the catalyst who if well equipped with more and more higher educational qualification could, as agents of catharsis, could bring out a positive change in the lives of every average student of the State by implanting strong foundation of qualitative education in the Government Schools paving way for the emergence of a bright future generation, who would be skilled human resources, contributing towards the building of a developing country. To be pragmatic, the role of teachers is one of man making mission aimed at skilled future generation.

8.3.At this juncture, I reiterate that the reward of incentive increment to the Teachers of various categories from 01.08.1968, had been only by issuance of Government Orders, which are nothing but executive instructions from time to time by the Government. The Hon'ble



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Apex Court in the case of ***Bharat Sanchar Nigam limited and others***

versus Tata Communications Limited etc reported in ***2022 SCC***

Online 1280, has dealt with the case of validity of the retrospective effect of Government Orders and the relevant portion of the same is extracted as follows:-

“29. It is a settled principle of law that it is the Union Parliament and State Legislatures that have plenary powers of legislation within the fields assigned to them, and subject to certain constitutional and judicially recognized restrictions, they can legislate prospectively as well as retrospectively. Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject. By a retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.

*30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, **but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute.** Keeping in mind the aforesaid principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this*



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extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment."

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8.4. Keeping in mind that the impugned G.O.Ms.No.95, dated 26.10.2023, is only an administrative/executive order, the same in the absence of any legislative competence cannot be made applicable with retrospective effect, as far as the grant of incentive increment in the scale of pay for those Teachers who have acquired higher educational qualification before 10.03.2020. The major shift in policy of the State dispensing/cancelling incentive increment for acquiring higher educational qualification in the scale of pay came to be issued with effect from 10.03.2020, by the issuance of G.O.Ms.No.37, Personnel and Administrative Reforms Department. Since it is an established position of law that, the effect of an administrative/executive order can always be prospective and not retrospective in the absence of legislative competence, the effect of dispensation/cancellation of incentive increment in the scale of pay of the various employees for acquiring higher educational qualification can be given effect only from 10.03.2020. Later, a scheme of reward of lump sum payment for acquiring higher education qualification came to be introduced by issuance of G.O.Ms.No.120, dated 01.11.2021 and the benefit of the same has been given only to those who acquire higher educational qualification on or after 10.03.2020, by way of the said Government

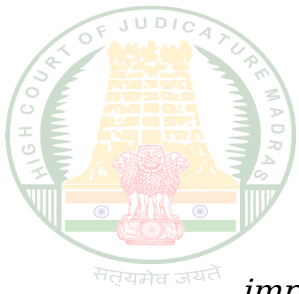


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Order. However, the benefit of grant of incentive increment in the scale of pay for acquiring higher educational qualification before 10.03.2020, to the various government employees, including Teachers, cannot be dispensed retrospectively, by the Government by way of a policy decision, by taking away the benefits given to the Teachers who have acquired higher educational qualification on par with similarly placed persons who were given with incentive increments in their scale of pay.

8.5. This Court has dealt with a case regarding giving retrospective effect to Government orders in the case of ***G.Sivagiganesan v. State of Tamil Nadu, Rep. By its Secretary, Public Works Department and others*** in ***W.P.Nos.29346 of 2013, batch*** dated 22.09.2017 and the relevant portion of the same is extracted as follows:-

"21.This Court also cannot lose sight of the fact that in several cases, in fact, few of them have cited above, the employees had obtained beneficial orders and those orders also came to be implemented by the Government on various dates even in the present year. In the said circumstances, this Court is unable to understand the situation as to how the petitioners alone can be singled out for discriminatory treatment by retrospectively applying the G.O.Ms.No.74, dated 27.06.2013. Any Government action is to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. A State cannot be allowed to adopt the discriminatory practice while dealing with the citizens or Government servants.



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22.In the instant case, the attempt to implement the impugned G.O.Ms.No.74, dated 27.06.2013 with retrospective effect, is nothing but a clear case of colourable exercise of power. The fundamental rights guaranteed by our Constitution sought to be impinged by bringing in the impugned G.O. with retrospective effect. Exercise of such power, therefore, cannot be held to be constitutionally valid. This Court is also conscious of the fact that in policy matters, this Court should be little show in interfering with the same, however, under the guise of public policy, the Government cannot arbitrarily and unjustly take away the rights of the employees which is against the scheme of the Constitution. In the instant case, the Government has precisely done the same.”

8.6.Fully fortified by the mandates of the above order of this Court, I find that retrospective implementation of the impugned G.O.Ms.No.95, dated 26.10.2023, particularly para no.7 of the G.O., and the portion “including those who have already submitted applications seeking incentive therefor” in para no.8 as unconstitutional. The retrospective operation of the impugned G.Os has the effect of taking away the benefit of reward of incentive increment, already available to the employees under the existing G.Os prior to 10.03.2020, as far as those who have acquired higher qualification prior to 10.03.2020 and the said exercise would obviously be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.



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9. Whether para no.6(vi) of G.O.Ms.No.37, dated 10.03.2020, is discriminative?

9.1. Article 14 of the Constitution of India should not be subjected to a narrow and pedantic approach. Equality is a dynamic concept which strikes at arbitrariness in State action under Article 14 of the Constitution of India ensuring fairness and equality of treatment. The principle of reasonableness should be all pervading while the Government introduces a policy decision or a shift in an existing policy. Thousands of Teachers who have acquired higher educational qualification have been extended with the benefit of award of incentive increment in their scale of pay before 10.03.2020. By issuance of G.O.Ms.No.37, the Government has dispensed/cancelled the grant of incentive increments in scale of pay for acquiring higher educational qualification. Clause 6(vi) of the said G.O. is extracted as follows:-

“The cases 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 order were issued by any of the department concerned, then they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degree



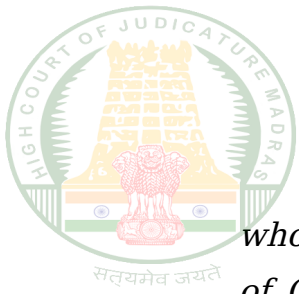
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acquired.”

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9.2.The aforesaid Clause 6(vi) of G.O.Ms.No.37, dated 10.03.2020, opened up a can of worms in the Education Department and this Court was flooded with hundreds of Writ Petitions challenging various orders passed by the respondent authorities rejecting the claim of incentive increment by those teachers who have acquired higher education before 10.03.2020. The said clause compelled the authorities to take an acrimonious stand, keeping the claim of incentive increment by the teachers who acquired higher qualification well before 10.03.2020, pending endlessly for want of concurrence from Finance Department. Condemning such delay by the respondent department and quashing various impugned orders of rejection of claim of incentive increments by teachers for acquiring higher qualification, this Court has passed umpteen numbers of orders quashing such rejection orders, thereby directing the competent authorities to sanction incentive increments pending concurrence from the Department of finance, since the same is unwarranted. The Hon'ble Division Bench of this Court in the case of ***the State of Tamil Nadu, Rep. By its Secretary, Department of School Education and others v. A.Govindasamy and others*** in ***W.A. (MD)No.1052 of 2024*** dated 21.06.2024, has dealt with a similar case and the relevant portion of the same is extracted as follows:-

“11. Therefore, already we have held that all the persons,



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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 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.”

9.3.I have dealt with a similar case in the case of **D.Arulvijay and others v. The Government of Tamil Nadu, Rep. By its Secretary to Government and others** in **W.P.(MD)No.7138 of 2023** and the relevant portion of the same is extracted as follows:-

“6.This Court is of the considered view that the impugned order, dated 03.01.2023 passed by the third respondent is not passed in consonance with G.O(Ms)No.37, Personnel and Administrative Reforms (FR~IV) Department, dated 10.03.2020.

There is a specific mention in the said Clause that the cases of Government servants who have acquired higher qualifications prior to the issue of the said G.O and were not



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sanctioned with advance increments would be examined separately as per the previous orders issued in concurrence with the Finance Department.

7.As far as this case is concerned, all the petitioners acquired higher qualifications before 10.03.2020 and mostly in the years 2015 and 2016. Though they have not obtained prior permission for acquiring the said qualification M.Phil, they have repeatedly requested later for ratification of acquiring the higher qualification. This issue is no more res integra and time and again, this Court has held that the petitioners would be entitled for incentive increments for having possessed higher educational qualifications even though they had not obtained prior permission from the authorities for having undergone the course for such higher education. Clause 6(vi) of G.O(Ms)No.37, Personnel and Administrative Reforms (FR~IV) Department, dated 10.03.2020, also mandates that the cases of the Government servants who have acquired higher qualifications would be examined in terms of the previous orders issued. In view of the same, these writ petitioners are also entitled to incentive increments which they have acquired for the post of higher qualification.”

9.4.It is needless to state that, the cases of Government servants who have acquired higher qualification prior to the issuance of G.O.Ms.No.37, dated 10.03.2020 and not sanctioned with advance increments are entitled to grant of incentive increment without an iota of doubt, for the said G.O., is nothing but an executive instruction which cannot have retrospective effect and hence, the effect of

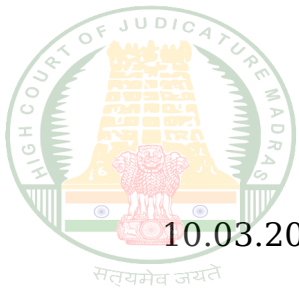


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cancelling/dispensing the scheme of grant of incentive increment shall only be prospective and never be retrospective. Since the said Clause has paved way to the departments concerned to issue discriminative orders negating the benefit of incentive increments by treating equally placed employees unequally, the same necessarily need to be quashed.

9.5.There cannot be any reasonable justification for the Government to deny one set of Teachers who have acquired higher educational qualification before 10.03.2020, with the benefit of incentive increment in their scale of pay while extending the concession of grant of incentive increment to thousands of Teachers who acquired higher educational qualification before the said cut-off date. Thus, the petitioners who claim the benefit of award of incentive increment, have properly established before this Court that their conditions of service including qualification, nature of work and place of employment are identical and equal and same duties are being discharged by them, as those who have acquired higher educational qualification and received incentive increment in their scale of pay before 10.03.2020.

9.6.On the basis of the illustration illustrated in the Table in para no.6.1, I am satisfied that, the petitioners claim for equality and parity on par with those who are already granted with an incentive increment in their scale of pay for acquiring higher educational qualification before



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10.03.2020 and a resultant hostile discrimination by way of impugned para no.6(vi) of G.O.Ms.No.37 and impugned para nos.7 and 8 of G.O.Ms.No.95 has been clearly made out. Taking a policy decision and making a policy shift by the Government could be well understood from the perspective of the Government's mammoth expenditure. However, a discrimination without reason, by refusing the benefit of incentive increment to a particular class of Teachers in their scale of pay, similar to those Teachers who have already enjoyed the reward of grant of incentive increment in the scale of pay, by retrospectively giving effect to the impugned G.Os, would certainly stare at the new policy decision taken by the Government.

10.Epilogue:-

10.1.The Hon'ble Apex Court has dealt with umpteen number of cases ensuring equality amongst equals and a few are extracted as follows:-

“(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities



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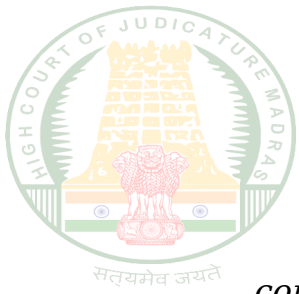
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imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.

(ii) In Govind Ram Purohit v. Jagjiwan Chandra reported in 1999 SCC (L & S) 788, at paragraph 3, the Hon'ble Supreme Court held thus:

3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.

(iii) In State of Karnataka v. N.Parameshwarappa reported in 2003 (12) SCC 192, the Hon'ble Supreme Court, at paragraph 8, held thus:



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8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30.03.1990, as raised in the proceedings.

(iv) In *State of U.P. v. Dayanand Chakrawarty* reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

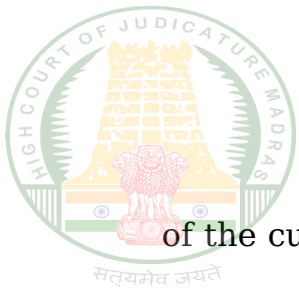
(v) The Hon'ble Supreme Court in *State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others* reported in 2015 (1) SCC 347, wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India."



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10.2.An incentive increment in the scale of pay attached to a definite post would even reflect upon the terminal benefits which would be received by the respective employees after retirement. A classification based on difference on educational qualifications justifies a difference in pay scales. That is why, for several decades, as a welfare measure the grant of the benefit of incentive increment in the scale of pay of employees, who possess/acquire higher education qualification had been the policy of the State. Even now the policy of rewarding encouraging the employees acquiring higher qualification is not completely done away by the State, but a shift in policy has been evolved dispensing with the incentive increment in scale of pay, with grant of one time lump sum payment. In such background in the facts and circumstances of this case, it is my considered opinion that the impugned Clause no.6(vi) of G.O.Ms.No.37, dated 10.03.2020, paves way for the Government to create an anomaly with respect to the claim of those employees who have completed higher education qualification before 10.03.2020 and whose applications are pending/who have not made applications so far. Only for the purpose of giving effect to the said Clause, the clarification G.O. came to be issued by the Government in G.O.Ms.No.116, dated 15.10.2020, clarifying in para no.4 serial no.7 that such cases would be considered in terms of the said impugned para no.6(vi) of G.O.Ms.No.37 and appropriate orders to be issued before 31.03.2021. The prescription



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of the cut-off date as 10.03.2020, for grant of incentive increments in the scale of pay for those employees who have acquired educational qualification before 10.03.2020, whose applications are pending/who have not made any application subject to the concurrence of the Finance Department in terms of the Administrative Government Order in every Department concerned is arbitrary and violative of Article 14 of Constitution of India. The said Clause goes to the root of the petitioners' claim for incentive increments in their scale of pay seeking extension of the said benefit/reward under the various previous G.O.s issued prior to 10.03.2020 in parity with similarly placed persons. Accordingly, Clause 6(vi) of G.O.Ms.No.37, dated 10.03.2020, is hereby quashed. As a consequence, clarification in para no.4(7) of G.O.Ms.No.116, dated 15.10.2020, automatically goes.

10.3.In the result, the following portion of the impugned para nos.7 and 8 in G.O.Ms.No.95, Human Resource Management (FR-IV) Department, dated 26.10.2023, is hereby quashed.

“7.Now, it has come to the notice of the Government that substantial number of claims are pending from candidates with higher educational qualifications. Hence, to expeditiously process and bring clarity to the scheme of granting incentive, in partial modification of the orders issued in the Government Order second and third read above and clarifications issued in the Government Letter fourth read above, the cut-off date for sanction of advance increments for having acquired higher



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educations qualification ended and the new scheme of sanction of lump sum amount is ordered to take effect from 10.03.2020. Thus, the clarification issued in Government order second read above and the Government letter fourth read above are harmonized to ensure that, all pending applications as on 10.03.2020 and claims made subsequently for sanction of benefits for having acquired higher educational qualifications shall be disposed as per this new scheme of granting lump sum incentives only and not the earlier scheme of granting increments in salary. This principle would ensure expeditious disposal of all pending claims, and also maintain parity and equal treatment between the claims pending as on date and for the persons acquiring higher educational qualifications in future also.

8..... including those who have already submitted applications seeking incentive therefor,....”

10.4.Finally this Court is bound to issue the following directions:-

(i)The Teachers who have acquired higher educational qualification before 10.03.2020 and whose application for grant of incentive in the scale of pay are pending are entitled to sanction of eligible incentive increments, in terms of the relevant G.Os prior to G.O.Ms.No.37, Personnel and Administrative Reforms (FR-IV) Department, dated 10.03.2020.

(ii)The Teachers who have acquired higher educational

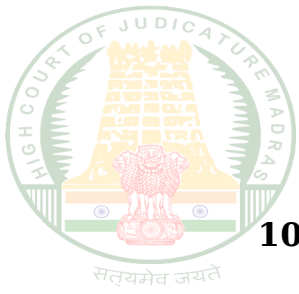


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qualification before 10.03.2020 and who have not made any application for grant of incentive increment in the scale of pay are entitled to sanction of eligible incentive increments, in terms of relevant G.Os prior to G.O.Ms.No.37, once an application is made in this regard and the same is automatic.

(iii)The shift in policy by introducing lump sum reward to employees acquiring higher educational qualification on or after 10.03.2020 vide G.O.Ms.No.120, Human Resource Management (FR-IV) Department, dated 01.11.2021 and G.O.Ms.No.95, Human Resource Management (FR-IV) Department, dated 26.10.2023 is upheld.

10.5.In view of the fact, that Clause 6(vi) of G.O.Ms.No.37, dated 10.03.2020 is quashed, the impugned circular dated 23.10.2020, in W.P. (MD)No.2714 of 2021, issued for the purpose of giving effect to Clause 6(vi) of G.O.Ms.No.37, dated 10.03.2023, becomes ineffective and accordingly, the same is also quashed and this Court hereby direct the respondents to sanction advance increment for the higher qualifications as per relevant G.Os. prior to G.O.Ms.No.37, dated 10.03.2020.

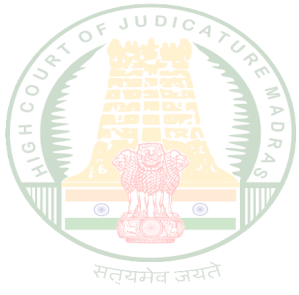


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10.6.In fine, these Writ Petitions stand partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.08.2024

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

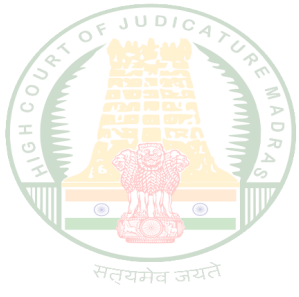


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To

- 1.The Chief Secretary,
State of Tamil Nadu,
Department of Human Resource Management (FR-IV),
Fort St. George,
Chennai – 600 009.
- 2.The Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
- 3.The Director of School Education,
College Road, Chennai -600 006.
- 4.The Joint Director of School Education,
College Road, Chennai – 600 006.
- 5.The Chief Educational Officer,
Sivagangai, Sivagangai District.
- 6.The District Educational Officer,
Sivagangai, Sivagangai District.
- 7.The Chief Educational Officer,
Madurai, Madurai District.
- 8.The District Educational Officer,
Madurai, Madurai District.



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L.VICTORIA GOWRI, J.

Mrn

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02.08.2024