



W.P.Nos.29196 of 2015 and
21910 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 31.01.2025

ORDERS PRONOUNCED ON : 28.03.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.29196 of 2015
and 21910 of 2013
and
M.P.Nos.1 and 2 of 2015

W.P.No.21916 of 2015:

- 1.P.Jayaprabu
- 2.M.Thirugnanam
- 3.A.Ramesh
- 4.C.Rathika
- 5.K.Krishnakumar
- 6.M.Amutha

... Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Rep., by Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.



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

3.The Chief Educational Officer,
Perambalur District, Perambalur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the first respondent in realtion to the proceeding issued in Letter (Ms) No.129, School Education [PK5(2)] 2013-1 dated 17.07.2013 and quash the same in so far as the petitioners are concerned and issue a consequential direction to the respondents to grant incentive increment for M.Phil degree from the date following the last date of the examination.

W.P.No.21910 of 2013:

1.P.Elangovan

2.P.Rajkumar

3.N.Veeramani

4.V.M.Kannan

5.V.R.Jayaraman

6.M.Rameshkumar

7.A.Annadurai

8.K.Kumar

... Petitioners



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Vs.

- 1.The Government of Tamil Nadu,
Rep., by Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Namakkal District, Namakkal.
- 4.The Chief Educational Officer,
Perambalur District, Perambalur.
- 5.The Chief Educational Officer,
Thanjavur District, Thanjavur.
- 6.The Chief Educational Officer,
Pudukottai District, Pudukottai.

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In both W.Ps.

For Petitioner : Mr.K.Jaganathan
For Respondents : Mr.K.H.Ravikumar
Government Advocate

COMMON ORDER

1.1. The brief facts that are relevant for the disposal of this writ petition are as under:

1.2. All the petitioners herein have been working as B.T. Assistants (School Assistants) in Tamil Nadu Educational Subordinate Service, that is High School Service. They had claimed the benefit for award of incentive increment for having acquired M.Phil., qualification. However, the Government issued a Letter (Ms) No.129, School Education [PK5(2)]2013-1, dated 17.07.2013 clarifying that the benefit of incentive increment for having acquired M.Ed., or M.Phil., or Ph.D., can be awarded only from the date of issuance of orders in G.O.(1D) No.18, dated 18.01.2013. It is aggrieved by the said letter dated 17.07.2013, the



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petitioners approached this Court by filing the present writ petition.

1.3. While questioning the said letter dated 17.07.2013, the petitioners also sought for a consequential direction to the respondents to grant incentive increment for M.Phil., degree from the date following the last day of examination.

2.1. It is the contention of the petitioners that the policy of granting incentive increments for having acquired higher qualification was introduced by the Government through G.O.Ms.No.42, Education Department, dated 10.01.1996 and in terms of the said Government Order, the Teachers are entitled for grant of such incentive increment from the date of last examination appeared by the Teacher for acquiring such higher qualification and G.O.(1D) No.18, dated 18.01.2013 is a continuation of the said process and therefore, the action of the Government in issuing the impugned clarificatory letter restricting the scope of the orders issued in G.O.(1D) No.18, dated 18.01.2013 is ultra vires. It is also the contention of



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the petitioners that the orders issued under Article 162 of the Constitution of India cannot be amended or modified by issuing a clarificatory letter and therefore, the impugned letter is bound to be declared as arbitrary and illegal.

2.2. The petitioners also placed reliance on FR 26 of the Fundamental Rules and the Rulings thereunder to contend that in case, if an employee is entitled for conferment of a certain benefit or concession on acquiring certain qualification, such entitlement would accrue from the date of last examination of the higher qualification and therefore, the same would apply to the case of the petitioners also and thus, it is claimed that the petitioners herein are entitled for award of incentive increment for having acquired M.Phil., qualification from the date of last examination appeared by the petitioners for acquiring such M.Phil., qualification.

2.3. Learned counsel for the petitioners also placed reliance on an order passed by a Co-ordinate Bench of this Court in W.P.No.2912 of 2016, wherein the Co-ordinate Bench of this Court by order dated 09.01.2023



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quashed the very same impugned letter dated 17.07.2013.

3. On the other hand, Mr.K.H.Ravikumar, learned Government Advocate appearing for the respondents contended that the qualifications of M.Phil./Ph.D., are included as higher qualifications for the first time through G.O.(1D) No.18, dated 18.01.2013 and therefore, the B.T. Assistants, who possessed such qualification as on the date of issuance of the said Government Order or the persons who acquired such qualification after issuance of the said Government Order can only be entitled for awarding of incentive increment from the date of issuance of the said Government Order, i.e., 18.01.2013 or from the date of last examination whichever is later, but not prior there to. Thus, he contended that the impugned clarificatory letter is no way modifying or amending the orders issued in G.O.(1D) No.18, dated 18.01.2013, but it is only clarifying the scope and ambit of the said Government Order.

4. This Court carefully considered the submissions made on either



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side and also considered the entire material placed on record.

5. It is not in dispute that the policy for awarding incentive increments was introduced for the first time through G.O.Ms.No.42, dated 10.01.1996. Through the said Government Order, B.T./B.Ed. Assistants are made eligible for two advance increments in the scale of pay admissible for their category, if such an Assistant possessed or acquired higher qualification specified in the said Government Order, that is, M.A., or M.Sc. M.Ed., degree or its equivalent degrees. In terms of paragraph 3 of the said Government Order, advance increments may be given from the day following the last day of examination in the higher qualification mentioned in Column (3) of the table mentioned therein whichever is later.

6. In terms of the said Government Order, the B.T. Assistants, who possessed higher qualification as prescribed under the said Government Order by the date of issuance of the said Government Order would be entitled for incentive increment from the date of the said Government Order



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and whereas the persons who acquired such higher qualification after issuance of the said Government Order would be entitled for such incentive increment from the later date, that is the date of last examination of such higher qualification. It is nobody's case that by virtue of the orders issued in G.O.Ms.No.42, dated 10.01.1996, the B.T. Assistants who acquired higher qualifications prescribed therein much prior to the issuance of the Government Order must be granted incentive increment from the date of the last examination of such higher qualification. It confers a right for such incentive increment either form the date of the Government Order or from the last date of examination whichever is later. In the similar way, through G.O.(1D) No.18, M.Phil., and Ph.D., qualifications for the first time were notified as higher qualifications entitling the B.T. Assistants for award of incentive increments in addition to the M.Ed., degree which were treated as higher qualification only from 18th January, 2013. The said Government Order also assigned the reason for treating the M.Phil., and Ph.D., qualifications as higher qualifications. Thus, it is evident that M.Phil., and Ph.D., are recognised as higher qualifications for awarding incentive



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increments for the first time through G.O.(1D) No.18, with effect from 18.01.2013. In other words, prior to 18.01.2013, M.Phil., and Ph.D., qualifications are not the notified higher qualifications for the post of B.T. Assistants. Therefore, the question of B.T. Assistants being entitled for award of incentive increment for acquiring M.Phil./Ph.D., prior to 18.01.2013 does not arise. Thus, it is evident that the provision providing for award of incentive increment for having acquired M.Phil./Ph.D for the first time came into force with effect from 18.01.2013 by issuance of G.O.(1D) No.18. The impugned letter also clarifies the same aspect. Thus, under no circumstances, the impugned letter can be said to be ultra vires G.O.(1D) No.18, dated 18.01.2013 or amending or modifying the orders issued therein. Thus, the contention advanced on behalf of the petitioners is bound to be rejected.

7. No doubt, a Co-ordinate bench of this Court in its order dated 09.01.2023 in W.P.No.2912 of 2016 has been pleased to quash the very same impugned letter. A perusal of the said order discloses that the learned



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Judge placed reliance on FR 26 Ruling 2 and on considering the orders issued in G.O.(1D) No.18, dated 18.01.2013 as an amendment to G.O.Ms.No.1024, School Education Department, dated 09.12.1993, came to the conclusion that the impugned letter clarifying that the orders issued in G.O.(1D) No.18, dated 18.01.2013 are prospective and quashed the letter dated 17.07.2013. As a matter of fact, FR 26 has no application to the case on hand. Even in terms of Ruling 2 of FR 26, it presupposes expansion of a provision providing for confirmment of benefit/concession or advantage of passing of an examination and in such case, the last date of examination or date which he passed shall be the crucial date for the purpose of extending such benefit or advantage.

8. In the instant case, there was no such provision providing for confirmment of a benefit, concession or right of a Government servant prior to 18.01.2013. Therefore, the petitioners acquiring M.Phil., qualification prior to 18.01.2013 absolutely has no relevance. The right to claim such incentive increment on acquiring the M.Phil., qualification came into



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existence only on 18.01.2013 and therefore, the question of the petitioners claiming benefit in terms of FR 26 does not arise. Absolutely, FR 26 has no application to the facts and circumstances of the case on hand. Further, the reason assigned by the learned Judge holding that the orders issued in G.O.(1D) No.18, dated 18.01.2013 is by way of amendment to G.O.Ms.No.1024, dated 09.12.1993 is also factually correct. This is evident from the perusal of G.O.Ms.No.1024.

9. In the light of the above, this Court is not in a position to acknowledge the reasoning assigned by the Co-ordinate Bench of this Court in the above referred order. The learned Judge failed to take note of the fact that the M.Phil., and Ph.D., qualifications are not the qualifications that were notified or recognised as higher qualifications *vis-a-vis* B.T. Assistants prior to 18.01.2013. Had that fact been noticed by the learned Judge, the learned Judge ought not to have interfered with the impugned clarificatory letter dated 17.07.2013. In the light of the above, this Court is of the considered view that the order passed by the Co-ordinate Bench of this



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Court is *per incuriam* for want of noticing the fact that Ph.D., and M.Phil., qualifications for the first time notified and recognised as higher qualifications *vis-a-vis* B.T. Assistants through G.O.(1D) No.18, dated 18.01.2013.

10. In the light of the above, this Court is of the considered view that the impugned clarificatory letter is nothing but clarifying the orders issued in G.O.(1D) No.18, School Education (E2) Department, dated 18.01.2013, but not in any manner modifying or amending the said orders and does not find any error or illegality in the impugned order and accordingly, these Writ Petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.03.2025

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



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ABR

To

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- 2.The Director of School Education,
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- 3.The Chief Educational Officer,
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MUMMINENI SUDHEER KUMAR, J.

ABR

Pre-delivery Order made in
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