



W.P.No.35388 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2025

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.35388 of 2024
and
W.M.P.Nos.38273 and 38274 of 2024

G.Malarchelvan

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai – 600009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600006.
3. The Chief Educational Officer,
Cuddalore District,
Cuddalore.
4. The Headmaster,
Government Higher Secondary School,
Maamangalam,
Cuddalore District.
5. The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore – 641 001.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the order passed by the 5th Respondent in Na.Ka.No.1341/E21/2017 dated 05.05.2017 and the consequential order passed by the 4th Respondent in Na.Ka.No.634/2017, dated 15.06.2017, quash the same.

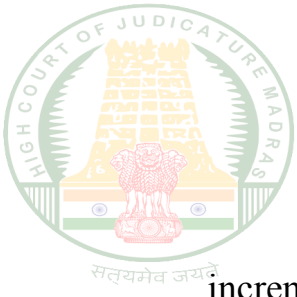
For Petitioner : Mr.R.N.Amarnath

For Respondents : Mrs. S.Mythreye Chandru,
Special Government Pleader (Edu.)
(for R1 to R3 & R5)

ORDER

This Writ Petition has been filed challenging the order dated 05.05.2017 in Na.Ka.No.1341/E21/2017 passed by the fifth Respondent and the consequential order dated 15.06.2017 in Na.Ka.No.634/2017 passed by the fourth Respondent.

2. The case of the petitioner is that he is working as a P.G.Assistant (Chemistry) in the fourth respondent/School. As per the Government Order in G.O. (1D) No.18, School Education Department dated 18.01.2013, the Government of Tamil Nadu decided to grant incentive

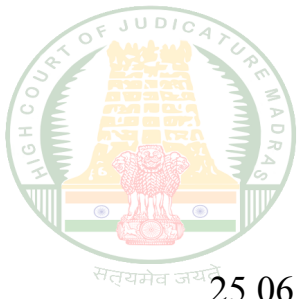


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increment to the teacher who acquire M.Ed/M.Phil/Ph.D on a condition that they will be entitled to get only two sets of incentive increment. The petitioner had completed his M.Phil degree in the year 2009 and he has been sanctioned with incentive increment from 25.06.2009 without any request from his side. The Government issued order in letter No.129 dated 17.07.2013 in and by which it was clarified that incentive increment shall be granted only from the date of the Government Order and the same was quashed by order dated 03.09.2021 in W.P. (MD) No. 9563 of 2014. Aggrieved by the same, Writ Appeal in W.A.(MD).No.94 of 2022 has been preferred and it was dismissed by judgement dated 11.02.2022.

3. In the interregnum, the fifth respondent raised an audit objection by proceedings dated 05.05.2017 in Na.Ka.No.1341/E21/2017 requiring the fourth respondent to make clarifications with regard to the excess payment of Rs.63,319/- made to the petitioner. Pursuant to the said proceedings, the fourth respondent has issued proceedings in Na.Ka.No.634/2017 dated 15.06.2017 stating that since the incentive increment for acquiring M.Phil degree was received by him from

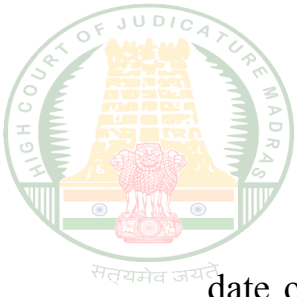


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25.06.2009, the excess payment of Rs.63,319/- has to be deposited to the Government Treasury and receipt has to be submitted. The fourth respondent has proceeded to pass the aforesaid order without following the principles of natural justice. The act of the fourth respondent to pass impugned order without issuing any notice or communication to the petitioner, vitiates the principles of natural justice. In response, the petitioner has given a representation dated 18.07.2017 stating that since writ petition relating to the subject matter is pending before this Court, he will comply with the orders passed by this Court. As the petitioner was not issued with any demand notice thereafter, he was under the impression that the proceedings issued against him has been dropped. But, to the petitioner's shock and surprise, the fourth respondent has orally directed him to remit a sum of Rs.63,319/- to the Government Treasury and produce the receipt. Therefore, the petitioner has filed this Writ Petition challenging the impugned orders.

4. The learned Special Government Pleader appearing for the first to third and fifth respondents, relying upon G.O. (1D) No.18, School Education Department dated 18.01.2013, would submit that instead of



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date of completing M.Phil degree, the petitioner is entitled to incentive increment only from the date of issuance of that G.O. She would further submit that the petitioner has wrongly made representation to sanction advance increment from the date of completing M.Phil., degree when there is no provision for the such sanction in the Rules. Therefore, the petitioner is not entitled for incentive increment from the date of completing M.Phil., degree, but only from the date of passing of the said Government Order.

5. It would be necessary here to refer to the order dated 03.09.2021 in W.P. (MD) No. 9563 of 2014 passed by the Madurai Bench of this Court with regard to the same issue and the relevant passages are extracted hereunder:-

"5. The petitioner, who had M.Sc., and M.Phil., at the time of entry into service, is also entitled to incentive increment. Hence, this writ petition is allowed as prayed for. The impugned order of the first respondent Lr.No.129 School Education (Paka5(2)2013~1, dated 17.07.2013 and consequent impugned order of the third respondent in



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Na.Ka.No.4797/A3/2013 dated 16.07.2013, are quashed.

The respondents are directed to fix the pay and increment of the petitioner, taking into account the higher qualification acquired by the petitioner from the date of her joining as B.T Assistant ie., on 23.03.2007...."

Further, in the appeal preferred by the Government against that order, the Division Bench of this Court by order dated 11.02.2022 in W.A. (MD) No. 94 of 2022 has held as follows:-

"3. Having heard learned advocate for the appellants and having considered the material on record this Court finds that, it is not even the case of the appellants State Authorities that something was asked for by the petitioner which was denied and therefore the Mandamus is issued. The case is that, certain benefits were already granted to the petitioner which according to the State was erroneously granted and therefore the same was ordered to be recovered. We find that, no recovery could have been ordered by the State Authorities and the interference by learned Single Judge in such facts, can not be said to be



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any error; much less any error apparent on the face of record. This appeal therefore need not be entertained.

4. *This appeal is dismissed...."*

6. A perusal of the materials placed on record clearly shows that the the aforesaid judgement of the Division Bench of this Court is applicable to the fact situation of the case in hand. Therefore, this Court is inclined to direct the respondents to consider the case of the petitioner by following the aforesaid judgement of the Division Bench of this Court in letter in spirit, and pass an appropriate order on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition stands disposed of. Consequently, the connected Miscellaneous Petitions are closed. No order as to costs.

28.01.2025

Index: Yes/No
Speaking order/Non-speaking order
kv

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School Education Department,
Secretariat, Fort St. George,
Chennai – 600009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600006.
3. The Chief Educational Officer,
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V.BHAVANI SUBBAROYAN,J.

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