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W.P.No.46290 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.46290 of 2025
and
W.M.P.Nos.51638 and 51639 of 2025

A.Yasodha

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Represented By Secretary to Government,
School Education Department,
Fort St. George, Chennai.
2. The Director of Elementary Education,
College Road, Chennai-6.
3. The District Educational Officer (Elementary),
Coimbatore District,
Coimbatore.
4. The Block Educational Officer,
Periyannayanpalayam Panchayat Union,
Periyannayanpalayam,
Coimbatore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents in relation to his proceedings issued in 1081/A1/2025 dated 20.06.2025 issued by 4th respondent and quash the same and issue a consequential direction to the respondents to continue the incentive increment



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which has already been granted to the petitioner in the proceedings issued in Na.Ka.No.330/07/A1 dated 25.09.2007 by the Assistant Elementary Educational Officer, Bhavani, Panchayat Union, Erode District, now re-designated as 4th respondent.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the fourth respondent in Na.Ka.No.1081/A1/2025 dated 20.06.2025.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The very same issue has already been dealt with by this Court in W.P.Nos.24236 of 2025 etc., batch dated 23.10.2025, wherein this Court held as follows:-

“ 6. Admittedly, the petitioners are all qualified with the subjects in the Higher Secondary syllabus, therefore, they were sanctioned with incentive increments as per the Government Order G.O.Ms.No.324 dated 25.04.1995. While being so, the petitioner in W.P.(MD).No.22704 of 2018 dated 21.01.2025 was also provided with incentive increments for possessing higher qualification in M.Com., However, the increment granted was cancelled on the ground that the petitioner therein being a teacher of English subject, and M.Com., degree obtained by him would not serve any purpose to the students and therefore,



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ordered recovery of incentive increments which was already granted to the petitioner therein and also to stop the incentive increments and ordered to revise the scale of pay. The Hon'ble Madurai Bench of this Court by order dated 25.01.2025 dismissed the writ petition and issued directions to the Government that the Government shall find out the ineligible teachers, who are receiving incentive increments for their higher qualification without any relevancy and to take appropriate action to recover the same, as it is a loss to the public exchequer.

7. On the basis of the order passed by this Court, now the impugned also ordered to recover the incentives and also to revise the scale of pay. In the meantime, a teacher filed writ petition in W.P.No.2043 of 2019 seeking a direction to the Government to reconsider the plea of grant of advance incentive increments for acquiring higher qualification by the said teacher and the same was allowed. Aggrieved by the same, the Government of Tamil Nadu, School Education Department, Chennai filed writ appeal before this Court in W.A.No.2747 of 2023. The Hon'ble Division Bench of this Court dismissed the writ appeal and observed as follows:-

7. Thereafter, successive State Governments expanded the scope of G.O.42 and whenever there was an attempt to narrow the scope to restrict the grant of incentive increments, the Associations of Government School Teachers were successful in negotiating with the successive Governments to have the incentive increments restored. One such instance is when the Government passed G.O.(Ms.)No.624 Education dated 13.07.1992, which restricted the grant of incentive increments and made it applicable only to higher qualifications, which will be actually useful to the students.

8. Unfortunately, after about 3 years, the Government went back again and passed G.O.(Ms.)No.324 dated 25.04.1995 which apart from recalling the conditions imposed by para 3 of G.O (Ms.)No.624 dated 13.07.1992, extended the benefit of incentive increments for higher qualifications in subjects that are part of the higher



secondary syllabus, thereby widening the grant of incentive increments to higher qualifications obtained in subjects like Economics or Commerce or Computer Science, which were not taught in Standards 1 to 8 for which the Secondary Grade Teacher was appointed.

9. Thereafter, the Government again issued G.O. (Per)No.134 dated 15.06.2007, which related to promotion. There again, the Government extended the promotional avenues to Secondary Grade Teachers to become Middle School Headmasters or Elementary School Headmasters by just obtaining a Bachelor's Degree irrespective of the subject. This malady was sought to be cured by G.O.(Per)No.134 dated 15.06.2007, wherein the Government decided to restrict promotion only to those who had obtained graduation in subjects which are taught in the preprimary, elementary and middle school. Such a restriction was not extended to the grant of incentive increments.

10. However, the Director of Elementary Education issued a clarificatory letter on 24.08.2016 restricting the benefit of incentive increments only to those subjects that are normally taught in Schools, namely, Tamil, English, Mathematics, Science and Social Science. The said letter specifically excluded degrees obtained in Commerce, Economics and Computer Science etc., from being considered for grant of incentive increments. This letter was put to challenge in the writ petition.

11. The learned single Judge rightly concluded that this letter dated 24.08.2016 overwrites or overreaches the effect of G.O (Ms.)No.324 dated 25.04.1995. The learned single Judge invoked the principle that a Government Order issued under the orders of the Governor cannot be rewritten by a head of the Department.

12. Though Mr.U.M.Ravichandran, learned Special Government Pleader would vehemently contend that this



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is only a clarification, we are unable to accept his submission. When G.O (Ms.)No.324 dated 25.04.1995 specifically declares that all higher qualifications obtained in subjects which form part of the higher secondary syllabus shall be entitled to grant of incentive increments, the Director of Elementary Education, by his letter, cannot narrow down the scope of the Government Order.

13. Today the entire scheme for incentive increments has been withdrawn but the issue as to whether the said withdrawal can only be prospective and it cannot operate retrospectively still lingers. We do not see the need to go into the said issue as it is not germane to the facts on hand. Here the respondent has completed M.A (Economics) in May 2010 and B.Ed. in December 2015. Therefore, she is entitled to two sets of advance incentive increments for these two higher qualifications obtained by her. The question of whether M.A.(Economics) would be useful to the School students or not cannot be gone into by us, as the Government, in its wisdom, had in G.O. (Ms.)No.324 dated 25.04.1995, consciously decided to confer the benefit of the incentive increments on all teachers who obtained higher qualifications in any subject found in the higher secondary syllabus.

14. Therefore, we are unable to fault the order of the learned single Judge. The Writ Appeal therefore fails and it is accordingly dismissed. There will be a direction to the appellants to grant two (2) sets of incentive increments, one for B.Ed. Qualification and another for M.A. (Economics), to the respondent with effect from the date of acquisition of the qualifications and pass orders within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

8. Thus it is clear that the G.O.Ms.No.324 dated 25.04.1995 specifically declares that all higher qualifications



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obtained in subjects which form part of the higher secondary syllabus shall be entitled to grant of incentive increments.

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9. *Mr.R.Neelakandan, learned Additional Advocate General submitted that the similar issue has been dealt with before the Hon'ble Madurai Bench of this Court in a batch of writ petitions in W.P (MD).No.14816 of 2025 dated 29.08.2025 and the relevant paragraphs are extracted as below:-*

28. *In view of the categorical decisions rendered by the Division Bench of this Court, the acquisition of higher qualifications like M.A., (Economics), M.A.(History), M.Com., M.A., (Political Science), M.A., (Sociology) and M.C.A., has no relevance to the subjects which are taught in classes 6 to 8 and therefore the petitioners who have acquired such higher qualifications like M.A., (Economics), M.A.(History), M.Com., M.A., (Political Science), M.A., (Sociology) and M.C.A., would not be eligible for grant of incentive increments. Hence, the cancellation of the incentive increments granted to the petitioners cannot be interfered with. However, in respect of B.Ed., degree, since it is a relevant degree for classes 6 to 8, the rejection of the grant of incentive increment for acquiring B.Ed., degree alone is set aside.*

29. *However, it is the settled position of law that amounts which have been paid by way of incentive increments, which are not on account of any wrong committed by the petitioners, the same cannot be recovered. The grant of incentive increments on the application of the petitioners have been made by the respondents on the basis of wrong interpretation of the Government Orders, which cannot be put against the petitioners and therefore in the absence of any wrong committed by the petitioners, this Court makes it clear that the amount paid to the petitioners towards incentive increment cannot be recovered and the order*



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revising the pay by cancelling the incentive increments could be applied only prospectively and not retrospectively.

30. Therefore, the cancellation of incentive increments, though is sustained the recovery of the amount already paid towards incentive increments by the respondents is wholly unsustainable and to that extent the said portion of the order is set aside.

31. Accordingly, these writ petitions are disposed of, with the aforesaid observations and directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10. Therefore the petitioners are not entitled for incentive increments for their higher qualifications in the unrelated subjects. That apart, they obtained a degree only based on the unrelated subjects to their teaching classes. Therefore they are also not eligible to get any incentive increments for their B.Ed., qualifications.

11. In so far as the recovery of incentives is concerned, the recovery can be made for the last five years as per the dictum laid by the Hon'ble Supreme Court judgment in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 3334. The above conditions cannot be countenanced to. In view of the G.O.Ms.No.324 Education, Science and Technology Department dated 25.04.1995, it is very clear that all higher qualifications obtained in subjects which form part of the higher secondary syllabus shall be entitled to grant of incentive increments. In so far as the recovery is concerned, the Hon'ble Supreme Court repeatedly held that the recovery of excess amount cannot be applied retrospectively and that too after a long time. Hence, all the petitioners were granted incentive increments from the year 2005 to 2010 onwards.

12. In this regard, Mrs.Dakshayani Reddy, learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court reported in 2024 SCC online SC 1909 in the case of Jagdish



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Prasad Singh Vs State of Bihar and others, wherein at para 21 it is held as follows:-

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21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir Vs State of Bihar this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir (supra) are extracted herein below:-

“57. This Court, in a catena of decisions has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess”.



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13. Thus it is clear that the relief against recovery is granted by Courts not because of any right vested in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. In the case on hand, the excess amount that has been paid to the petitioners was not because of any misrepresentation or fraud on their part. The petitioners also absolutely had no knowledge that the incentives that were being paid to them was contrary to the Government Order. In fact, the G.O.Ms.No.324 dated 25.04.1995 is clear that those who have acquired higher qualifications obtained in subjects which form part of the Higher Secondary syllabus shall be entitled to grant of incentives increments. Therefore, only on the basis of the Government Order, the petitioners were granted incentive increments. Therefore it cannot be stated that the incentive increments were granted to the petitioners by wrong interpretation of Government Order in G.O.Ms.No.324 dated 25.04.1995.

14. The Director of Elementary Education issued a clarificatory letter on 24.08.2016 restricting the benefit of incentive increments only to those subjects that are normally taught in schools, namely, Tamil, English, Mathematics, Science and Social Science. The said letter specifically excluded degrees obtained in Commerce, Economics and Computer Science etc., from being considered for grant of incentive increments. The said letter overrides the effect of G.O.Ms.No.324 dated 25.04.1995. Therefore, the Government letter dated 24.08.2016 cannot be considered for any purpose when the Government passed an order under the orders of the Governor of the State.

15. Further, the issue with regard to denial of 2nd increment for M.Phil., degree dealt with by this Court in W.P. (MD).No.3697 of 2018 and this Court by order dated 25.01.2022 held that the conditions imposed in G.O.Ms.No.624 dated 13.07.1992 stand effaced. The earliest Government Order issued in this connection, is in the spirit of encouragement and to stimulate the appetite of teachers for



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study and exploration of different subjects. Any curtailment in this regard would be anathema and the removal of the conditions is, in my view, a proper and appropriate move. Therefore, the petitioners are entitled for their incentive increment which were already granted to them as per G.O.Ms.No.324, dated 25.04.1995.

16. Though the impugned orders were passed by referring to the order passed by the Madurai Bench of this Court in W.P (MD).No.22704 of 2018 dated 21.01.2025, it failed to consider the order passed by the Hon'ble Division Bench of this Court in W.A.No.2747 of 2023 dated 28.03.2025 in which this Court had categorically held that as per G.O. (Ms) No.324 dated 25.04.1995, all higher qualifications obtained in subjects which form part of the higher secondary syllabus shall be entitled to grant of incentive increments.

17. In view of the above, the orders impugned in these writ petitions cannot be sustained in toto and they have to be quashed and all impugned orders are hereby quashed in all the writ petitions.

18. Accordingly, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are also closed."

4. In the light of the above order passed by this Court, the order impugned in this writ petition cannot be sustained and is liable to be quashed. Accordingly, the order passed by the fourth respondent in Na.Ka.No.1081/A1/2025 dated 20.06.2025 is hereby quashed.



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5. In the result, this writ petition is allowed. Consequently, connected

Miscellaneous petitions are closed. No costs.

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To

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The Government of Tamil Nadu,
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