

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 28498 of 2018

AND

WMP. 4991 OF 2019, WMP NO. 33261 OF 2018, WMP NO. 33254 OF 2018

1. G.Parthasarthy

S/o.D.Gajendran, No.9/3,

Thirunavukarasu Street, Perambur,

Chennai - 11 Chennai

Petitioner(s)

Vs

1. The Secretary to Government

School Education Department, Fort St.

George, Chennai - 600009Chennai

2.The Director of School Education

DPI Buildings, College Road, Chennai

- 600006

3.The Chief Education Officer

Panagal Maligai, Saidapet, Chennai -

600015

4.The District Education Officer

Chennai North District, Govt. Girls

Higher Secondary School, Villivakkam,

Chennai - 600049

5.The Head Master
Dharmamurthi Rao Bahadur Calavala,
Cunnam Chettys Higher Secondary
School, Perambur, Chennai - 600011

Respondent(s)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the records relating to the order dated 28.08.2018 passed by the 5th respondent herein and quash the same as being illegal, arbitrary, unconstitutional and consequently direct respondents Nos.2 to 5 to disburse the petitioners salary along with incentive increment for completion of higher qualification without any recovery of the incentive increment paid to the petitioner.

For Petitioner(s): M/s.T.Sundaravadanam

For Respondent(s): Mrs.P.Rajarajeswari
Government Advocate

ORDER

The Writ Petition has been filed to quash the order of the fifth respondent dated 28.08.2018 and consequently direct respondents Nos.2 to 5 to disburse the petitioners salary along with incentive increment for completion of higher qualification without any recovery of the incentive increment paid to the petitioner.

2. The petitioner was appointed as a Junior Grade Physical Education Director on 10.09.2004. He has secured M.Phil degree in the year 2008. The fourth respondent vide his proceedings dated 03.09.2013, has allowed an incentive increment for the higher qualification to the petitioner. In view of the audit objection raised by the fifth respondent on 28.08.2018 the incentive already allowed to the petitioner has been cancelled with a demand to refund the incentive increment so far availed by the petitioner.

3. Mr.T.Sundaravadanam, the learned counsel for the petitioner, submitted that as per G.O.Ms.177, School Education Department, dated 13.10.2016 the petitioner is entitled to an incentive increment from the date of acquiring the qualification and not from the date of issuance of the Government Order. In the impugned order it has been stated that the incentive has to be given only from the date of issuance of the Government Order and not from the date of acquiring the qualification. The learned counsel for the petitioner submitted that as per Clause 3 of the above Government Order, persons who are already getting one increment in view of the higher qualification is entitled to get an another incentive increment from the date of the Government Order. It is further submitted that the respondent has misconstrued the said Government Order in view of the audit objection raised by presuming that the Government order is applicable from the date of issuance of the order and issued an order to refund one increment alone prior to the issuance of G.O.Ms.177, School Education

Department, dated 13.10.2016.

4. The petitioner is found to be qualified to get first increment as per the orders issued in G.O.Ms.No.324 Education, Science & Technology Dept., dated 20.12.1993. The entitlement of additional one increment alone has to be sanctioned from the date of issuance of G.O.Ms.177, School Education Department, dated 13.10.2016 and it cannot be presumed that the petitioner is entitled even to the first increment from the date of issuance of the said Government Order. In this regard it is appropriate to refer the earlier judgment rendered by this Court in similar such case in W.P.(MD) No.14861/2018 dated 02.02.2023. In the said judgment it has been held as under:

“ 7. The learned Government Advocate appearing for the respondent submitted that in G.O.Ms.177, School Education Department, dated 13.10.2016, it has been categorically stated that the employees would be getting a second incentive increment from the date of the issuance of the G.O.Ms.No.177, School Education, dated 13.10.2016. However, the learned counsel for the petitioner submitted that it says that the second incentive increment would be eligible from the date of issuance of order and not for the first incentive increment, since the petitioner is claiming the first incentive increment for M.Phil., degree, the said G.O. Is not applicable and only G.O.Ms.No.324. Dated 25.04.1995 is applicable. Therefore, this Court is of the considered opinion that the petitioner is eligible as per G.O.Ms.No.324 dated 25.04.1995.”

5. The respondent has raised similar objection by filing a Writ Appeal in W.A.No.2084/2024. In the said judgment the Division Bench has held that the petitioners who have already availed the benefit of G.O.Ms.No.324 dated 25.04.1995 cannot be asked to refund the same by wrongly construing the contents of the subsequent G.O.Ms.177, School Education Department, dated 13.10.2016 and the writ appeal has been dismissed.

6. In view of the above findings already rendered and has been followed in so many cases of similarly placed persons, I feel the impugned recovery order issued by the fifth respondent is illegal and the impugned order is liable to be quashed.

7. In the result, the Writ Petition is allowed and the impugned order passed by the fifth respondent dated 28.08.2018 is hereby quashed and the respondents Nos.2 to 5 are directed to disburse the petitioner's salary along with incentive increment for completion of higher qualification without any recovery of the incentive increment paid to the petitioner.

08-04-2025

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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