

W.A(MD)Nos.792 to 803 & 329 of 2025

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**Reserved on : 30.04.2025**

Pronounced on : 28.05.2025

CORAM :

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**AND**

**THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)Nos.792 to 803 & 329 of 2025**

**and**

**C.M.P(MD)Nos.5338, 5340, 5342, 5344, 5343, 5347, 5354, 5336, 5353,  
5350, 5351 of 2025**

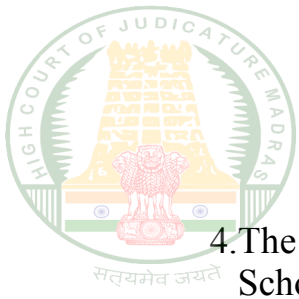
**W.A.(MD)No.792 of 2025**

T.Justin Prabhu

... Appellant / Review Applicant

Vs.

- 1.The Secretary to Government,  
School Education Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.
- 2.The Director of School Education,  
Office of the Director of School Education,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Ramanathapuram District,  
Ramanathapuram.



W.A(MD)Nos.792 to 803 & 329 of 2025

4.The Zonal Accounts Officer (Audits)  
School Educational Department,  
Madurai – 2.

5.The Headmaster,  
Government Higher Secondary School,  
Nainarkovil,  
Ramanathapuram District.

... Respondents/ Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.85 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.793 of 2025**

M.Hemalatha

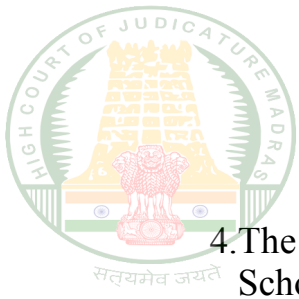
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W.A(MD)Nos.792 to 803 & 329 of 2025

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... Respondents/ Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.86 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.794 of 2025**

S.Usha

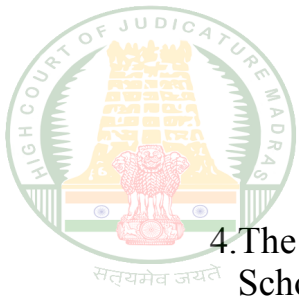
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... Respondents/ Respondents

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**W.A.(MD)No.795 of 2025**

C.Shivakkumaar

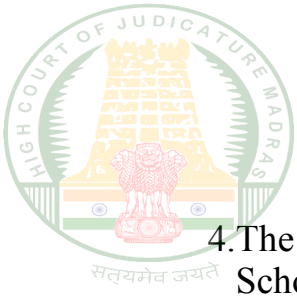
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W.A(MD)Nos.792 to 803 & 329 of 2025

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... Respondents/ Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.88 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.796 of 2025**

G.Rajakumari

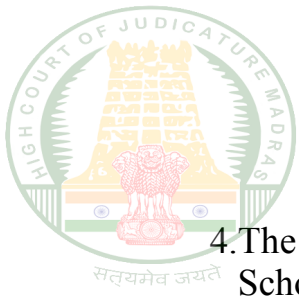
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... Respondents/ Respondents

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**W.A.(MD)No.797 of 2025**

C.Reema

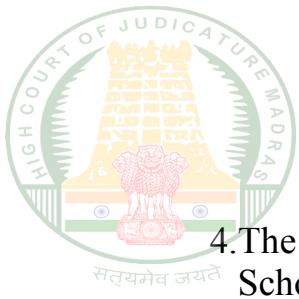
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**W.A.(MD)No.798 of 2025**

R.Latha Selvabai

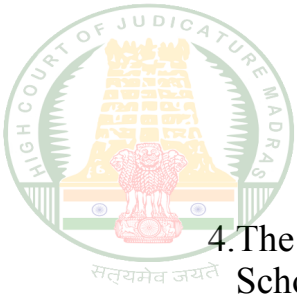
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... Respondents/ Respondents

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**W.A.(MD)No.799 of 2025**

K.Senthil Vadivelan

... Appellant / Review Applicant

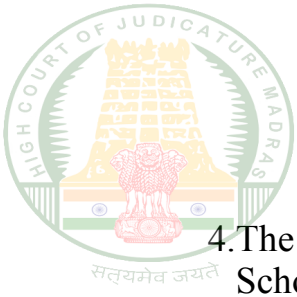
Vs.

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Madurai – 2.

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... Respondents/ Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.92 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.800 of 2025**

A.Jenanthul Firthous

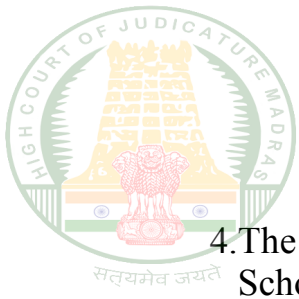
... Appellant / Review Applicant

Vs.

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Chennai - 9.

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**W.A.(MD)No.801 of 2025**

M.Shanmugasundaram

... Appellant / Review Applicant

Vs.

1.The Secretary to Government,  
School Education Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.

2.The Director of School Education,  
Office of the Director of School Education,  
Chennai - 6.

3.The Chief Educational Officer,  
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School Educational Department,  
Madurai – 2.

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5.The Headmaster,  
Government Higher Secondary School,  
Nainarkovil,  
Ramanathapuram District.

... Respondents/ Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.99 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.802 of 2025**

A.G.Sivaraj

... Appellant / Review Applicant

Vs.

- 1.The Secretary to Government,  
School Education Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.
- 2.The Director of School Education,  
Office of the Director of School Education,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Ramanathapuram District,  
Ramanathapuram.
- 4.The Zonal Accounts Officer (Audits)  
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Madurai – 2.



W.A(MD)Nos.792 to 803 & 329 of 2025

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Government Higher Secondary School,  
Nainarkovil,  
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... Respondents/ Respondents

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.101 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.803 of 2025**

M.Harihara Krishnan

... Appellant / Review Applicant

Vs.

- 1.The Secretary to Government,  
School Education Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.
- 2.The Director of School Education,  
Office of the Director of School Education,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Ramanathapuram District,  
Ramanathapuram.
- 4.The Zonal Accounts Officer (Audits)  
School Educational Department,  
Madurai – 2.
- 5.The Headmaster,  
Government Higher Secondary School,  
Nainarkovil,  
Ramanathapuram District.

... Respondents/ Respondents



W.A(MD)Nos.792 to 803 & 329 of 2025

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.102 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

**W.A.(MD)No.329 of 2025**

S.Robert Kennedy

... Appellant / Review Applicant

Vs.

- 1.The Secretary to Government,  
School Education Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.
- 2.The Director of School Education,  
Office of the Director of School Education,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Ramanathapuram District,  
Ramanathapuram.
- 4.The Zonal Accounts Officer (Audits)  
School Educational Department,  
Madurai – 2.
- 5.The Secretary,  
Ayur Vishya Higher Secondary School,  
Paramakudi,  
Ramanathapuram District.

... Respondents/ Respondents



W.A(MD)Nos.792 to 803 & 329 of 2025

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside in so far as 50% recovery is concerned the order passed in Rev.Aplw.(MD)No.100 of 2024 dated 06.06.2024 on the file of this Court and allow the present writ appeal.

(In all writ appeals)

For Appellants : Mr.V.Panneer Selvam

For Respondents : Mr.V.Omprakash

Government Advocate

### **COMMON JUDGMENT**

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

These writ appeals are preferred against the common order passed by the learned Single Judge dismissing the review application of the appellant / review applicant seeking to set aside the order in so far as 50% recovery is concerned.

2.The appellants filed writ petitions with a prayer to quash the order, dated 11.06.2016 passed by the 2nd respondent and consequential order dated 28.06.20216 passed by the 3rd respondent in respect of recovery of incentive increment paid.



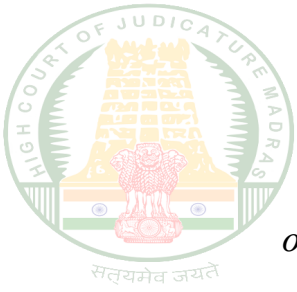
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3. The learned Single Judge after considering the fact partially modified the impugned order and directed to recover 50% of the amount paid from the 2003 to 2012 and to grant the benefit of incentive increment from 18.01.2013 and also to refix the consequential pensionary benefit.

4. Being aggrieved over the same, the writ petitioners filed Review Applications Rev.Apl W.(MD)Nos.85 to 92 and 98 to 102 of 2024 seeking to review the order, dated 26.09.2022, passed in W.P.(MD)Nos. 15231 of 2016 etc., batch in so far as 50% recovery and re-fixation are concerned. The learned Single Judge after considering the fact declines to entertain the review applications and dismissed all the review applications.

5. Aggrieved by the common order passed in all review applications by the learned Single Judge, these writ appeals are filed on the following among other grounds :-

*a. The Government issued order in G.O.(1D).No.18 School Education dated 18.01.2013, sanctioning the Incentive increment for M.Phil., and Ph.D.,. That be so, the same cannot*



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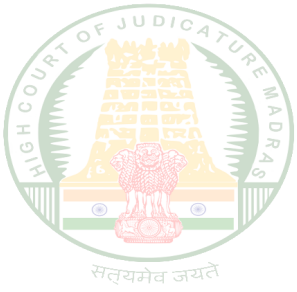
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*override by the proceedings or letter. But the Government letter No.129 dated 17.07.2013 was issued by overriding the Government order and the same is impermissible. Hence, the order of the learned Judge is liable to be*

*b.The learned Judge passed the order only on the basis of the Government Letter No.129 dated 17.07.2013. The letter was quashed by this Hon'ble Court in W.P.(MD)No.9563 of 2014 dated 03.09.2021 and the same was upheld by the Division Bench in W.A.(MD)No.94 of 2022 dated 11.02.2022. Hence, the order of the learned Judge is liable to be*

*c.The appellants are entitled to get all the benefits as per the Government order as well as the decision of the Hon'ble Court and the same was not considered. Hence, the order of the learned Judge is liable to be set aside in so far as 50% recovery is concerned.*

*d)The incentive increment was granted and there is no dispute about the eligibility and other criteria. There is no misrepresentation on the part of the appellants. Therefore, the order of recovery is illegal, arbitrary and the same is liable to be set aside.*



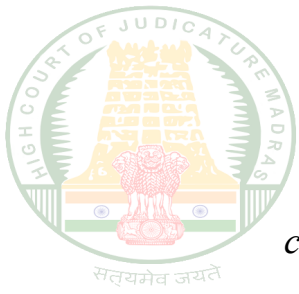
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*e)As per the Government order incentive increment has to be given from the day following the last day of the examination. Therefore, there is no illegality in sanctioning the incentive increment to the appellants from the date of passing of the higher qualification. Hence, the order of the learned Judge is liable to be set aside.*

*f)The authorities accepted the eligibility of the appellants and there is no illegality in sanctioning the incentive increment. Now they raised objection on the basis of the Letter No.129 dated 17.07.2013 that the appellants are eligible to get the incentive increment only from the date of Government Order. The issue is settled by this Hon'ble Court in several decisions that the letter cannot override the Government Order. The letter was set aside by this Hon'ble Court and recovery was also set aside and the issue is covered by decision of the Hon'ble Division Bench. Hence, the impugned orders are liable to be set aside.*

*g)The learned Judge accepted the case of the appellants and set aside the impugned order of recovery in part i.e., 50%. That be so, direction to recover the 50% amount is totally in*



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*contradiction and liable to be set aside.*

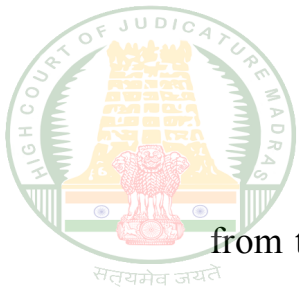
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*f)The scheme of incentive increment for teachers introduced the year 1969 in G.O.Ms.No.42 Education Department dated 10.01.1969. The Government Order is very clear that the incentive increment may be given from the day following the last day of the examination in higher qualification. It is made clear that the entitlement is from the date of degree. The same was not considered. Hence, the impugned order is liable to be set aside.”*

Therefore, prayed to set aside in so far as 50% recovery is concerned, the common order in batch of review applications dated 06.06.2024 and allow these Writ Appeals.

6. Heard the learned counsels on either side and perused the materials available on record.

7.The petitioners were awarded with second incentive increments for possessing an M.phil., degree as per G.O(MS)No.18 dated: 18.01.2013. They were drawing pay, including the incentive increment



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from the day following the last date of examination as per the terms of

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Fundamental Rule 26 which provides that a Government servant is entitled to an incentive increment from the day following the last day of examination of degree and that a Government servants deemed to have acquired a degree from the day following the last date of examination which he had passed.

8. However the Government in a clarification letter bearing No.129 dated 17.07.2013, stated that the second incentive increment should be payable only on or from 18.01.2013.

9. Based on the clarification latter, the writ petitioners were directed to refund the incentive increment paid from the earlier period, against which the aggrieved persons filed writ petitions in W.P(MD)Nos. 13832, 15229 to 15233 and 15235 to 15241 of 2016 and in the writ petitions the learned single Judge modified the recovery order partially by directing the respondents to recover for 50% and waived the balance 50% against which the review petitions were filed by the petitioners and the same was dismissed.



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10. The petitioners submitted that the authority had accepted the eligibility and sanctioned the incentive increment, there is no misrepresentation on the part of the appellants. Now, the respondents has raised objection based on the letter No.129 dated 17.07.2013 stating that the petitioners are entitled to receive the incentive increment only from the date of the Government Order viz., 18.01.2013. the Government latter overriding the Government Order in G.O (1D) No. 18 School Education dated: 18.01.2013 the same is impermissible and the order of the learned single Judge is liable to be set aside.

11. In this connection the petitioners referred earlier judgement in W.P.No.9563 of 2014 dated 03.09.2021, in which, the learned Single Judge quashed the Government letter No.129 dated: 17.07.2013.

12. In the above Judgment the learned Single Judge referred the judgment in ***Nand Kishore Sharma and Others vs. State of Bihar and Others*** reported in ***1995 Supp (3) SCC 722***, in which, the Apex Court considering the question of recovery of amount paid by mistake, it was observed:-

*“2.....but at the same time, we are of the view that*



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*the appellant cannot be blamed. The anomaly committee recommended grant of higher pay scale to them. The finance department also concurred with the same and as a result, thereafter the appellants were given the pay scales and were disbursed the arrears as a lump sum. Having paid arrears to the appellants, the state government could not have reversed the same without complying the rules of natural justice.....”*

*(emphasis added)*

12.5. *In (2001) 2 SCC 186..(E.S.p. Rajaram and others versus union of India and others) while negating the claim regarding entitlement of higher elements, the Supreme Court observed:-*

*“23.... Howe in our considered view, it will be just unfair to clarify that any amount drawn by such employees either in the basic post(traffic apprentice) or in a promotional post will not be required to be refunded by the employee concern as a consequence of judgement. This position also follows as a necessary corollary from the observation made by this court in para eight of judgement in M.Bhaskar case.”*

12.6 *Similar view is expressed by the Supreme Court in (2007) 6SCC 180-Babu Lal Jain versus State of MP and by the Madras High Court in 2006 (1) MLJ 143 palavesamuthu vs Tamil Nadu administrative tribunal.*

13. *On a perusal of these decisions, it is apparent that where excess payment is made not on account of any erroneous representation of the employee, but on the basis of error committed by the authorities, the Supreme Court has invariably directed that recovery need not be made.*

14. *In the present case, there is nothing to indicate that the present appellant had made any misrepresentation in the matter. Since the amount had already been paid and obviously spent by the appellant thinking that she was entitled to such amount, it would cause undue hardship if*



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*at a distant point of time such amount is recovered.*

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13. The learned Single Judge therefore held in para 4 and 5 of the judgment that,

*“4.... the appellant therein is entitled to get incentive increment for having entered into service with higher qualification, the petitioner in the present petition is also entitled to succeed. The Hon'ble Division Bench, after considering the object behind the grant of incentive increment to the teachers for acquiring higher qualification, as specifically held that if the incentive increment was granted to a lower qualified persons for acquiring higher qualification after entering into service. Such incentive increment should be granted to a person who possessed higher qualification at the time of appointment.*

*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 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.”*

14. Subsequently, in another W.P.No.2912 of 2016, the learned Single Judge in his order dated: 09.01.2023 quashed the Government letter No.129 dated 17.07.2013, with the following observation:



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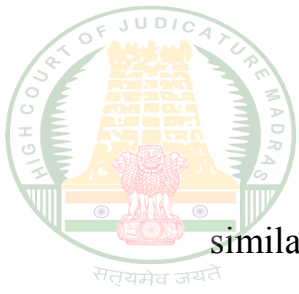
'6. The learned counsel for the petitioners submitted that when the Government Order in G.O.(1D).No.18 provides for grant of second incentive increment for possessing higher educational qualification, the same cannot be taken away by way of clarification through a letter.

7. I find some force in the submissions made by the learned counsel for the petitioners. F.R.26 Ruling 2 reads as follows:-

“ (2) In cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed. In cases where the examination or test can be passed in installments, the title to the right, benefit or concession will be deemed to have accrued on the day following the last day of the examination in the subject or subjects in which he has passed. ”

8. What has been ordered in G.O.(1D).No.18, cannot be given a go-by by way of clarification and the object of the Government Order, cannot be watered down through a letter. As a matter of fact, G.O.(1D).No.18 is in the mode of an amendment to an earlier G.O.Ms.No.1024 School Education Department dated 09.12.1993 wherein, the higher educational qualification of M.Phil and Ph.D were inserted along with M.Ed. Thus, the very reasoning given by the respondents in the impugned order that G.O.(1D).No.18 will have only a prospective effect, cannot be sustained, in view of the fact that this Government Order is only an expansion of the earlier existing G.O.Ms.No.1024 dated 09.12.1993. Even otherwise, as pointed out by the learned counsel for the petitioners, a Government Letter cannot overrule the Government Order. As such, the impugned order itself cannot be sustained.'

15. The petitioner further referred the judgement in W.P.No.9027 of 2015 dated.02.08.2024. In the above writ petition deals with the



similar issue and held that;

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14. From a reading of the above counter as well as the portion of the Government Order, wherein, it has been set out that the benefit of incentive increment to M.Phil., and Ph.D., was being made in consideration of the long pending demand/request, would indicate that the above G.O. itself was to remove an anomaly and clarificatory. That being the case, there is merit in the submission of the learned counsel for the petitioners that the restriction of the benefit only from the date of issuance of G.O(1D)No.18 dated 18.01.2013 instead of from the day following the last day of examination may not be valid.

15. Yet another reason why the impugned letter is illegal is also in view of the fact that any attempt at curtailing the benefit conferred by G.O(1D)No.18 by granting the same only from the date of the said G.O and not from the day following the last day of passing examination which entitles the candidate to benefit of increment would be contrary to Rule 26 of the Fundamental Rules of the Government of Tamil Nadu, which as seen supra provides in cases where the passing of an examination or test confers on a Government servant the title to any right, benefit or concession, such title should be deemed to have accrued on the day following the last day of the examination or test which he passed.

16. It is trite law that a benefit conferred by a Government Order cannot be curtailed / whittled down / impaired by a



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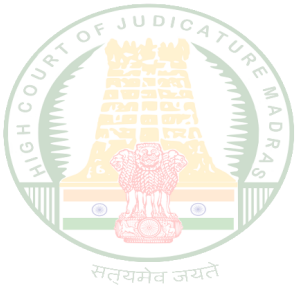


W.A(MD)Nos.792 to 803 & 329 of 2025

*letter. In view thereof the impugned letter dated 17.07.2023, insofar as it curtails the benefit of second incentive only from the date of the above G.O. instead of granting the benefit from the day following the last day of the examination in terms of Rule 26 of the Fundamental Rules of the Government of Tamil Nadu is thus set aside. In view thereof, the recovery proceeding also cannot be sustained and consequently set aside.*

The learned Judge set aside the Government letter dated 17.07.2013.

16. The Government letter No.129 dated 17.07.2013 has already been quashed, much prior to the present judgment against which Government preferred an appeal in W.A(MD)No.94 of 2022, that was also dismissed, confirmed the order of the Single Judge. Once the Court quash the clarification letter No.129, an order illegal, that order becomes void and non-existent in the eyes of law. The Government did not filed any second appeal, it implies acceptance and the quashed order cannot be reviewed or relied upon. Once the Court set aside the Government order, it becomes null and void, it is treated as if it never existed.



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17. Therefore the subsequent order passed by the learned Single

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Judge in W.P(MD)Nos. 13832, 15229 to 15233 and 15235 to 15241 of 2016, directing the officials for recovery of 50% based on the Government letter No.129 dated 17.07.2013, which has already been quashed is not proper and liable to be set aside.

18. Accordingly, we set aside the order passed in the review applications in Rev.Aplw.(MD)Nos.85 to 92 and 98 to 102 of 2024 and the writ appeals are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

**(G.J., J.) & (R.P., J.)**  
**28.05.2025**

Index : Yes / No  
NCC : Yes / No  
Rm



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To

- 1.The Secretary to Government,  
School Education Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai - 9.
- 2.The Director of School Education,  
Office of the Director of School Education,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Ramanathapuram District,  
Ramanathapuram.
- 4.The Zonal Accounts Officer (Audits)  
School Educational Department,  
Madurai – 2.



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W.A(MD)Nos.792 to 803 & 329 of 2025

**DR.G.JAYACHANDRAN J.**  
**AND**  
**R.POORNIMA, J.**

rm

**W.A (MD)Nos.792 to 803 & 329 of 2025**

**28.05.2025**