



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.06.2024

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THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A(MD)No.975 of 2024
and
C.M.P.(MD)No.7055 of 2024

- 1.The Director of Elementary School Education,
College Road, DPI Campus, Chennai -6.
- 2.The District Elementary School Education,
Tirunelveli, Tirunelveli District.
- 3.The Block Education Officer,
Block Education Office,
Palayamkottai Town, Tirunelveli District. ... Appellants

vs

- 1.M.Fatima Vijaya Latha
- 2.The Correspondent,
CMS US BORNE Middle School,
Palayamkottai Town, Tirunelveli District. ...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 29.01.2024 passed in W.P(MD)No.683 of 2024.



For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

This Writ Appeal is directed against the order, dated 29.01.2024 in W.P.(MD)No.683 of 2024, wherein, the learned Single Judge had directed the authorities to pass orders on the representation of the Writ Petitioner in the light of the earlier order passed in W.P(MD)No.8907 of 2021, dated 03.11.2023 in respect of awarding incentive increment for acquiring higher qualification.

2.The first respondent/Writ Petitioner, who was appointed as Secondary Grade Teacher on 04.09.2001 and working under the second respondent School, obtained prior permission from the authorities and had completed B.Lit., course and B.Ed., course in the year 2011-14. After the completion of B.Ed., degree, she got an incentive increment and on obtaining further permission, she had studied M.A.(Tamil) and completed



the course on 18.05.2019 and had made an application to the third appellant for getting incentive increment on 02.11.2020. The said application was forwarded to the second appellant and since no orders were passed, the first respondent had preferred a Writ Petition in W.P.(MD)No.683 of 2024 for awarding of the incentive increment.

3.The Writ Court, after taking note of the fact that incentive increment for the similarly placed persons were granted by order, dated 03.11.2023 in W.P.(MD)No.8907 of 2021, held that G.O.(Ms)No.37, cannot operate retrospectively, had directed the authorities to pass necessary orders in the light of the earlier order passed by this Court. Challenging the same, the Government had preferred the above appeal.

4.Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the appellants vehemently contended that even though incentive increments were granted earlier, subsequently, the Government, as a policy decision, had issued G.O.(Ms)No.37, dated 10.03.2020, cancelling the scheme of sanction of advance increment. Further, he contended that in view of G.O.(Ms)No.116, dated 15.10.2020, if at all a Government servant



had acquired higher qualification prior to the date of passing of G.O.

(Ms)No.37, the grant of incentive increment would be examined as per

Clause-6(vi) of G.O.(Ms)No.37 and appropriate orders will be passed.

When the Government, as a policy decision, has withdrawn the scheme and

the issue in respect of the persons, who were acquired higher qualification

prior to the issuance of G.O.(Ms)No.37, had also been dealt with and

covered under Clause-6(vi) of the Government Order, the impugned order

passed by the Writ Court directing the authorities to pass orders relying on

an earlier order is erroneous and cannot be sustained, he contended and

sought for indulgence of this Court to interfere with the order passed by the

Writ Court.

5.Heard the learned Additional Government Pleader appearing for the appellants and perused the materials available on record.

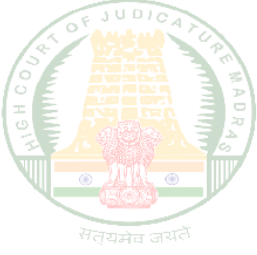
6.The Government in order to encourage the Teachers to acquire themselves with higher qualifications, so that the students would get benefited, issued Government Order providing incentive increments to the Teachers, who acquired higher qualification, of-course, after getting



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necessary permission from the authorities. Wherever Teachers had acquired higher qualification, in all such cases, the Government had provided incentive increments, as per the scheme introduced by the Government. Later, there had been several litigations in respect of payment of incentive increment and by orders passed by the Court, it was settled that a Teacher, whoever acquires the higher qualification, will only be entitled for two incentive increments in their career, even though they acquired further higher qualification.

7.Later, the Government took a policy decision to cancel the scheme of incentive increment and had issued G.O.(Ms)No.37, dated 10.03.2020, cancelling the scheme of sanctioning of advance increment in all the departments. In view of G.O.(Ms)No.37, the grant of advance increment for acquiring higher qualification has been dispensed with, but, however, the issue in respect of Teachers, who had acquired higher qualification prior to the issuance of G.O.(Ms)No.37, dated 10.03.2020, has been dealt with in Clause-6(vi) of the Government Order, which is extracted hereunder for ease reference:



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VI.The case of Government servants who have acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, they they are not eligible for sanction of any advance increments for passing higher qualification irrespective of the post held/degrees acquired.”

8.It is the contention of the learned Additional Government Pleader that in view of Clause 6(vi), which says that if no previous order was issued by any of the department concerned, then they are not eligible for any advance increment, will mean that only in cases, where an order has been passed for awarding incentive increment prior to the Government Order, they are entitled for the same and in cases, where, such orders has not been passed, they are not entitled. The argument is liable to the outrightly rejected for the simple reason that G.O.(Ms)No.37, even though had been issued cancelling the scheme of advance increment, by incorporating Clause 6(vi) in the Government order, wherever, the Teachers, who had acquired higher qualification, of-course, after obtaining necessary permission, had



acquired such qualification, prior to the issuance of Government Order, are entitled for the award of incentive increment.

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9.G.O(Ms)No.37 does not operate retrospectively and the purposive interpretation of Clause 6(vi) in the Government Order can only be that the Teachers, who had all acquired the higher qualification prior to the issuance of the Government Order and if otherwise qualified are eligible for sanction of the incentive increment. If the interpretation made by the learned Additional Government Pleader is to be accepted, then the very object of the inclusion of clause 6(vi) in the Government Order becomes redundant. As such, we have no hesitation to hold that the Teachers, who, after obtaining necessary permission from the authorities, had acquired higher qualification, ie., wherever the degrees had been awarded prior to issuance of G.O.(Ms)No.37, dated 10.03.2020, are entitled for advance increment for the higher qualification, if it is within the limit of two incentive increments in their career.

10.In the instant case, admittedly, the first respondent after obtaining necessary permission had acquired M.A.(Tamil) degree as early as on



18.05.2019, which is well before the issuance of G.O.(Ms)No.37, dated 10.03.2020 and the first respondent had been awarded only one incentive

increment for the B.Ed., course. Hence, the first respondent is entitled for the sanctioning of second advance increment for the M.A.(Tamil) degree obtained by her, as covered under Clause-6(vi) of G.O(Ms)No.37. In such view of the matter, we find no reason to interfere with the order passed by the learned Judge and the order of the Writ Court is accordingly, sustained.

11.Resultantly, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
12.06.2024

Internet :Yes/No
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AND

G.ARUL MURUGAN, J.

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Judgment made in
W.A(MD)No.975 of 2024

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