

(2014) 10 MAD CK 0174

In the Madras High Court

Case No : Writ Petition No. 7381 of 2007 and O.A. No. 6369 of 2002

G. Meenalochini

APPELLANT

Vs

Chief Educational Officer

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 8 MLJ 746

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—The petitioner was in possession of B.T. qualification. However, she was appointed as Secondary Grade Teacher on 21.09.1987, as no person was available with Secondary Grade qualification at that time.

2. While appointing B.T. Assistants in the post of Secondary Grade Teacher, it was stated that such Teacher could not claim incentive increment for their Graduation and B.Ed., qualification.

3. In this case, the petitioner was appointed as Secondary Grade Teacher on 21.09.1987 and her service was regularised on 01.06.1988. Prior to that, she was appointed on contract basis. For acquiring M.Ed., she was granted incentive increment on 04.06.1990. Likewise, she acquired M.A., degree for which she was granted another incentive increment on 25.06.1999.

4. While so, an audit objection was made on 25.09.2002 stating that the petitioner, who is a B.T. Assistant appointed to the post of Secondary Grade Teacher is not entitled to incentive increment for acquiring higher qualification. Hence, the impugned order was passed for recovery and refixation.

5. In these circumstances, the petitioner has filed this writ petition seeking for a direction to the respondents not to recover any amount from her on the basis of the audit objection and sought for a consequential direction to the respondents not to refix her pay.

6. When the matter came up for admission, the Tribunal granted interim stay of recovery on 12.12.2002, which reads as follows:

"This application is filed by Tmt.G.Meenalochini, challenging the order of recovery passed against her by the respondent, as per which, she has been directed to remit certain amount alleged to have been received in excess of salary due to her. The orders of recovery have been passed on 25.9.2002 and this seems to have been communicated to the applicant a bit later. The amount has been ordered to be recovered from the salary of the applicant in future. The order has not been passed after giving notice to the applicant. Therefore, Interim stay from recovering the amount mentioned therein. Admit. Notice and counter by eight weeks."

7. A reply affidavit is filed by the respondents, wherein the aforesaid facts are not disputed. It is stated therein that though the petitioner did not possess Secondary Grade qualification, she was appointed as Secondary Grade Teacher based on her B.T. qualification. At the time of appointment, it was made clear that the petitioner could not be given incentive increment for acquiring higher qualification.

8. Heard the submissions made on either side and perused the materials available on record.

9. If the petitioner is granted incentive increment for her degree and B.Ed. qualification, while she was holding the post of Secondary Grade Teacher, the same are not correct and the excess amount paid towards incentive increment for the degree and B.Ed., qualification shall be recovered and refixation shall be made. But it is not so.

10. On the other hand, the petitioner claims incentive increment for acquiring Post Graduate Degree namely M.A., and M.Ed. The very purpose of granting incentive increment is to encourage the Teachers to acquire higher qualification as the same would ultimately benefit the students. The knowledge acquired by the Teachers by acquiring higher qualification is rewarded by way of incentive increment only for the benefit of the students. The petitioner acquired Post Graduate Degree as well as M.Ed., qualification for which incentive increment was rightly paid. But unfortunately, the audit made objection as if the petitioner is not entitled to incentive increment for higher qualification, namely degree and B.Ed., which was a condition made at the time of appointment. Since the petitioner was appointed as Secondary Grade Teacher, due to the non availability of Secondary Grade qualified persons, a condition was imposed that the such Teacher could not claim incentive increment for the degree and B.Ed., qualification. But the same cannot be stretched to deny incentive increment for the Post Graduate degree and M.Ed., obtained by the petitioner for which, incentive increments were given in 1990 and 1999 respectively, while the petitioner joined in service in 1987.

11. At this juncture, it is relevant to note that a Division Bench of this Court in R.

Premakumari Vs. State of Tamil Nadu, has held that the purpose of granting incentive increments is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification and therefore, granting incentive increment for Teachers, who already acquired higher qualification are also entitled to incentive increments. In this regard, paragraph Nos. 7 to 10 of the said judgment are extracted here-under:

"7.The learned single Judge has observed "Incentive increments are granted only for persons acquiring higher qualifications while in service but not to a person, who possess a higher qualification even before entering into service".

8. We do not think the aforesaid observation of the learned single Judge can stand the scrutiny of logic or even reality. The obvious intention in granting an incentive increment is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification, even though in service, so that the quality of service would improve. This is obviously on the assumption that a higher qualified person could work more efficiently. Therefore, it defies logic as to why a person who had already qualified would not get an incentive increment, if such an incentive increment is given to a lower qualified person in service, who acquires subsequently such higher qualification. Such a differential treatment would not stand the scrutiny of right to equality as enshrined in Articles 14 and 16 of the Constitution.

9. That apart, if the relevant G.Os are examined carefully, it can be safely concluded that the G.Os in reality do not intend to lay down in the manner it has been now concluded by the learned single Judge. We have already extracted the relevant portions of the G.Os. The underlined portion of G.O.Ms.No. 42 dated 10.01.1969 indicates that if a person possessing higher qualification enters into service, his initial pay may be fixed by giving advance increments. Similarly, in the subsequent G.O.Ms.No. 747, dated 18.08.1986, paragraph 2 makes it clear that "the P.G teachers and Headmasters of Higher Secondary Schools who possess or acquire Post Graduate qualification in education i.e. M.Ed., Degree shall be granted two advance increments in the scales of pay admissible to them". It is nowhere contemplated in the G.Os., that the incentive increments would be given only to those who acquired subsequently the qualification, but it would be given to all those who either possess, which means the degree is obtained at the time of entering into service or acquire, which means the degree is obtained after entering into service. Even the subsequent G.Os or the clarifications, nowhere indicate that in order to be eligible for getting incentive increment, the person has to acquire such higher qualification only after entering into service and not otherwise. Therefore, we are unable to accept the conclusion of the learned single Judge that a person who enters into service after having acquired a higher qualification, is not entitled to get incentive increments.

10. Since the impugned order was passed on the basis that the appellant was not entitled to receive incentive increments having entered into service with higher qualification is now disapproved by us, the authorities are required to consider

the matter afresh in the light of the conclusion already made to the effect that the appellant was entitled to receive such increments at the time of entry into service".

12. In my view, the audit objection referred to above is contrary to the aforesaid Division Bench judgment of this Court. Hence, I am of the view that the petitioner is entitled to succeed in this writ petition.

13. Accordingly, the writ petition is disposed of with a direction to the respondents not to recover any amount from the petitioner on the basis of the audit objection and not to refix her pay also. No costs.