

(2009) 08 MAD CK 0423

In the Madras High Court

Case No : Writ Petition No. 6760 of 2007

M. Anbuchezhian

APPELLANT

Vs

The Headmaster Government Boys Higher Secondary School

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 08 MAD CK 0423

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : P. Mohan Raj, for the Appellant; C.K. Vishnupriya, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioner is a Post Graduate Assistant (Chemistry) in a Government Higher Secondary School. At the time of his initial appointment during 1997, he possessed higher qualification viz., M. Phil. For possessing the higher qualification, he was granted two advance increments by way of incentives from the date of his appointment. The same was cancelled by the respondent vide impugned order dated 06.10.2001.

2. The petitioner filed O.A. No. 256 of 2002 before the Tamil Nadu Administrative Tribunal to quash the impugned order dated 06.10.2001.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 6760 of 2007.

4. Heard the submissions made by Mr. P. Mohan Raj, learned Counsel for the petitioner and Mrs. C.K. Vishnupriya, learned Additional Government Pleader for the respondent.

5. The order of the respondent is based on the objection made by the audit party of Education Department, Coimbatore. According to the audit objection, since the

petitioner obtained the higher qualification prior to his appointment, he is not entitled to incentive increments. It seems that the audit party relied on G.O.Ms. No. 1170, Education, Science and Technology Department, dated 20.12.1993. The relevant portion of the G.O.Ms. No. 1170 is extracted here-under:

4. The Government accept the request of the Director of School Education and issue the following orders:

(i) The Post-Graduate Teachers who possess higher qualification like M. Phil.,/ Ph.D/P.G., Diploma in Teaching English shall be granted one incentive increment (i.e.,) two advance increments.

(ii) This incentive increment shall be given only to those who possess the said higher qualifications as on 01.03.1993 and this concession will not be extended in future.

6. The audit party particularly relied on Clause (ii) of para 4 of the said G.O.Ms. No. 1170. According to the said clause, the person who possessed higher qualification of M. Phil.,/Ph.D/PGDTE as on 01.03.1993 alone are entitled to incentive increments.

7. The respondent filed a reply affidavit interpreting Clause (ii) para 4 of the said Government Order to the effect that though the petitioner obtained M. Phil., as on 01.03.1993, he is not entitled to incentive increments, since he was not even in employment as on 01.03.1993.

8. The learned Counsel for the petitioner has produced a judgment of a Division Bench of this Court in R. Premakumari Vs. State of Tamil Nadu, and more particularly, paragraph No. 5.3 of the said judgment and the relevant portion of the said judgment is extracted here-under:

5.3 Thereafter, on the basis of the judgment of the Madras High Court in W.A. Nos. 2604 to 2606 of 1999 and other connected matters, G.O.(Per) No. 194 dated 10.10.2006 was issued. The relevant portion of which is to the following effect:

4. Under the above circumstances on the basis of the High Court order and also accepting the recommendation of the Director of School Education is found the Government decided to issue the following ratification to the effect that in G.O. (per) No. 1170 Education Science and Technical Education Dept., dt. 20.12.1993 to change the G.O., that one increment shall be given to the P.G. Teachers possessing M. Phil., Ph.D., P.G.D.T.E and the ratification can be issued to benefit all the P.G. Teachers. G.O.(per) No. 1170 Education Science and Technical Education Dept., dt.20.12.1993 be suitably amended and accordingly the following amendment is issued.

Ratification

Deleted the para 3(ii) contained in G.O.(per) No. 1170 Education Science and Technical Education Dept., Dt.20.12.1993.

9. The learned Counsel for the petitioner further states that while construing G.O.Ms. No. 42 Education Department, dated 10.01.1969 and G.O.Ms. No. 747 Education Department, dated 18.08.1986, the aforesaid Division Bench 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 that therefore, granting incentive increment for Teachers, who already acquired higher qualification are also entitled to incentive increments.

10. In this connection, the learned Counsel has brought to the notice of this Court paragraph Nos. 7 to 10 of the judgment in R. Premakumari Vs. State of Tamil Nadu, and the same 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.

10. In the view of the later G.O.(Per) No. 194 dated 10.10.2006, deleting Clause (ii) para 4 of G.O.Ms. No. 1170, Education, Science and Technology Department, dated 20.12.1993 and also in view of the reasoning given by the Division Bench of this Court in R. Premakumari Vs. State of Tamil Nadu, , the objection of the audit party has no basis and therefore, the impugned order is liable to be set aside.

11. In the result, impugned order in Na.Ka. No. 114/1-14/15/2001 dated 06.10.2001 passed by the respondent is set aside.

12. The writ petition is allowed accordingly. No costs.