
(2011) 07 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No. 49421 of 2006 and O.A. No. 4206 of 2001

M. Santhi

APPELLANT

Vs

Assistant Elementary Educational Officer

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 07 MAD CK 0028

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : B. Ravi, for the Appellant; Roofus Abraham, Government Advocate (Education), for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The Petitioner joined as Secondary Grade Assistant on 10.11.1987. She passed M.A. Degree in 1989. She was

sanctioned incentive increment on 04.01.1990 for acquiring M.A. Degree. She also passed M.Ed. Degree and she was sanctioned another

incentive increment on 21.05.1995 for acquiring M.Ed. Degree.

2. The Respondent passed the impugned order dated 02.04.2001 seeking to recover the incentive increments based on the Audit objection. The

Petitioner has filed the original application in O.A. No. 4206 of 2001 before the Tamil Nadu Administrative Tribunal. While admitting the matter,

the Tribunal granted interim stay of recovery. On abolition of the Tamil Nadu Administrative Tribunal, the matter has been transferred to this Court

and renumbered as W.P. No. 49421 of 2006.

3. No. counter has been filed by the Respondent.

4. Heard the learned Counsel appearing for the Petitioner and the learned Counsel appearing for the Respondent.

5. The learned Counsel appearing for the Petitioner submits that the impugned order was passed without notice and without hearing the Petitioner

and hence, the same is violative of the principles of natural justice. The learned Counsel for the Petitioner further submits that No. reason is given

for passing the impugned order except stating that the audit objected for granting incentive increment. The Petitioner was not furnished with the

audit objection. Therefore, the Petitioner does not know the reason for the recovery.

6. The learned Counsel also has relied on the following Judgments in support of his contention:

i) A judgment of the Division Bench of this Court dated 14.5.2008 made in W.A. (MD) No. 529 of 2007 (R.Premakumari v. State of Tamil Nadu,

Rep. by its Secretary to Government, Education Department, Fort St. George, Chennai - 9 and others).

ii) A judgment of this Court dated 24.03.2009 made in W.P. No. 42299 of 2006 (P.Subramanian v. Director of School Education, Chennai - 6

and Anr.).

7. On the other hand, the learned Government Advocate appearing for the Respondent has sought to sustain the impugned order.

8. I have considered the submissions made on either side.

9. The Petitioner was granted incentive increment for acquiring M.A. Degree on 04.01.1990. The Petitioner was again granted another increment

for acquiring M.Ed. Degree on 21.05.1995. The impugned order dated 02.04.2001 was passed by the Respondent seeking to recover the

amount paid towards incentive increment based on the Audit report. Admittedly, the impugned order was passed without hearing the Petitioner.

The impugned order has resulted in serious civil consequences. Hence, before passing the impugned order, the Petitioner should have been heard

in compliance of the principles of natural justice. But, the Petitioner was not heard. Hence, the impugned is bad and illegal. Furthermore, as rightly

contended by the learned Counsel for the Petitioner, No. reason is given in the impugned order except stating that based on the audit report the

order was passed. The Audit report was not furnished to the Petitioner. Also, the

first incentive increment was given in the year 1990 that was

sought to be recovered after 10 years. There is No. misrepresentation on the part of the Petitioner while she was given incentive increment. Hence,

the impugned recovery is bad.

10. As rightly contended by the learned Counsel for the Petitioner, the matter is squarely covered by the Division Bench judgment of this Court

dated 14.5.2008 made in W.A.(MD) No. 529 of 2007 (R.Premakumari v. State of Tamil Nadu, Rep. by its Secretary to Government, Education

Department, Fort St. George, Chennai - 9 and others). In the said Division Bench Judgment, it has been held that the purpose of granting incentive

increment is to persuade the teachers to acquire higher qualification as that would help the student community. Even higher qualification acquired at

the time of appointment is considered to be eligible for incentive increment as per the Division Bench Judgment. The relevant paragraphs namely

paras 8 and 9 are extracted hereunder:

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 & quot; 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 No. where 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, No. where 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 qualifications, is not entitled to get incentive increments.

11. Further, a decision of this Court made in W.P. No. 42299 of 2006 (P.Subramanian v. Director of School Education, Chennai - 6 and Anr.) is

also applicable to the facts of this case. The relevant paras 7 to 9 of the said judgment are extracted hereunder:

7. The sanction of incentive increments for acquiring higher educational qualification in the relevant subject was ordered by the Government in

G.O.Ms. No. 42, Education Department dated 10.01.1969. It is true that the Petitioner is entitled to get incentive increments while working as

B.T.Assistant for having acquired higher qualifications namely, P.D.Diploma. In G.O.Ms. No. 1170, Education Department dated 20.12.1993 one

set of incentive increment is to be sanctioned for M.Phil/P.Hd./P.G.Diploma in English. The relevant portion of the said Government order reads as

follows:" The Government accept the request of the Director of School Education and issued the following order:

(i) The P.G. Teachers who possess higher qualification like M.Phil, P.Hd., P.G.Diploma in teaching English shall be granted one incentive

increment (i.e.) two advance increments & quot; The cut off date fixed for those who had passed the said degrees as on 01.03.1993 was set aside

by this Court and the said cut off date was removed by the Government in G.O.Ms. No. 194 School Education Department dated 10.10.2006.

Thus, the Petitioner is entitled to get one set of incentive increment for acquiring P.G.Diploma in teaching English course.

8. Similar issue was considered by me in W.P. No. 15419 of 2005, dated 24.01.2007 and allowed the writ petition. The Department filed W.A.

No. 230 of 2008 and same was dismissed by the Division Bench of this Court on 06.01.2009. In my another order made in W.P. No. 13590 of

2008, dated 24.06.2008, a similarly placed person was granted relief. The Government also issued G.O.Ms. No. 17, School Education, dated

08.01.2008 and ordered to sanction third set of incentive increment to similarly placed persons by accepting the various orders passed by the

Division Bench of this Court made in W.A. Nos. 2604 to 2606 of 1999, 1154 to 1156, 2150 and 1193 of 2000 and W.A. Nos. 995 to 1003 of

1999, dated 20.06.2006. The said orders were also followed in W.P. No. 7702 of 2008, by order dated 25.11.2008.

9. In the light of the above uncontraverted facts and law, the Petitioner is entitled to get incentive increments for acquiring P.G.Diploma. The first

Respondent is directed to pass necessary orders and pay the same within four weeks from the date of receipt of copy of this order.

12. For all the aforesaid reasons, the impugned order is quashed. Accordingly, the writ petition is allowed. No. costs.