

(2009) 08 MAD CK 0419

In the Madras High Court

Case No : Writ Petition No. 5704 of 2007

S. Vaithialingam

APPELLANT

Vs

The District Education Officer and The Head Master, Govt. Hr.
Sec. School

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 08 MAD CK 0419

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : G. Elanchezhian, for the Appellant; C.K. Vishnupriya, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The original application No. 551 of 2002, before the Tamil Nadu Administrative Tribunal (herein after referred to as the Tribunal) is now writ petition in W.P. No. 5704 of 2007 before this Court.

2. Heard, the submissions made by Mr. G. Elanchezhian, learned Counsel for petitioner and Mrs. C.K. Vishnupriya, learned Additional Government Pleader for the respondents.

3. The petitioner is a B.T. Assistant. He was granted incentive increments for obtaining the higher qualification, namely, M.Ed., However, the same was sought to be withdrawn and recovery was effected pursuant to the impugned order, dated 15.09.2001, issued by the first respondent, basing on the audit objection.

4. The Impugned order has been passed solely on the basis of the audit objection. The audit objection proceeds that as per G.O.1023/1024, Education , Science & Technology, Department dated 9.12.1993, unless a B.T. Assistant acquires a post graduate degree, he is not entitled to receive incentive increments for acquiring higher qualification of M.Ed. In support of his

contention, the learned Counsel has relied on the G.O.MS. No. 42, Education Department, dated 10.01.1969 and contends that incentive increments are provided for acquiring both the post graduate degree and also for M.Ed. qualification. Paragraph 2 of the said Government Order, which is relevant of this case, is extracted hereunder:

B.T. Teacher who after passing M.A. Or M.Sc., qualifies for M.Ed degree examination but working in B.T or Head master's post may be given advance increments for a second time also, i.e. two advance increments after passing M.Ed., degree.

5. The learned Counsel also relies on a decision of the Division Bench of this Court, reported in R. Premakumari Vs. State of Tamil Nadu, , wherein this Honourable Court has clearly held that the purpose of granting incentive increments is to encourage persons to acquire higher qualification, either before joining service or after joining service. If that is the purpose of the Government Orders granting incentive increments, the audit objection is certainly contrary to the dictum of this Court. Paragraphs 7 to 10 of the aforesaid judgment are extracted hereunder:

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 possesses 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 10.1.1969 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 18.8.1986, 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.

6. In these circumstances, the Impugned order passed on the basis of the audit objection is set aside. The writ petition is allowed. No costs.