

(2015) 07 MAD CK 0315

In the Madras High Court

Case No : W.A. (MD). Nos. 701, 769 of 2015, 464, 465, 475, 455 of 2014, M.P. (MD). Nos. 1 of 2015 and 1, 2, 3 of 2014

The Director of School Education and Others

APPELLANT

Vs

S. Amalraj

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Citation : (2015) 07 MAD CK 0315

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : V.R. Shanmuganathan, Special Government Pleader, for the Appellant; V. Paneerselvam, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J—In all the appeals, sum and substance of the pleadings, is that the respondent, in each of the appeals, is a PG Assistant, and on acquiring M. Phil., qualification claimed 3rd incentive increment, which fact is not disputed by the learned Special Government Pleader. The Writ Court by separate orders, rejected the objection of the educational authorities and directed them, to grant incentive increments for acquiring M. Phil qualification.

2. Appeals have been filed on the ground inter alia that vide G.O. Ms. No. 42, Education Department, dated 10.01.1969 grant of incentive increments was introduced to those who acquire higher educational qualification. Vide G.O. Ms. No. 1023, Education Science and Technology Department, dated 09.12.1993, orders were issued that Secondary Grade Teacher are eligible for two advance increments when they acquire B.T. or B.Ed and they are again eligible for two advance increments when they acquire M.A. or M.Sc., or M.Ed. Similarly a BT teacher is eligible for two advance increments for passing M.A. or M.Sc., qualification and again eligible for two advance increments for passing M.Ed qualification. Thus, a teacher is eligible only for four advance increments in total. The same had earlier been reiterated in Government letter in Ms. 590, dated

29.03.1976. Thereafter, vide G.O. Ms. No. 1170, Education Science and Technology Department, dated 20.12.1993, PG teachers who possess higher qualification like M. Phil etc., shall be granted one incentive increment and it shall be given only to those who possess the said qualification as on 01.03.1993.

3. When the present appeals are came up for hearing, placing reliance on a recent decision in W.A. (MD). No. 81 of 2010, dated 20.03.2015, Mr. V. Paneerselvam, learned counsel for the respondent, submitted that all the above said grounds have been considered by the Hon"ble Division Bench of this Court and that the issue is covered.

4. After going through the said judgment, Mr. V.R. Shanmuganathan, learned Special Government Pleader, who had argued W.A. (MD). No. 81 of 2010, fairly accepted the said submissions.

5. Facts are not disputed. PG Assistants, who had acquired M. Phil qualification, have sought for incentive increments. Similar challenge made in the present writ appeals have been considered and answered in the negative against the State. For brevity, decision made in W.A. (MD). No. 81 of 2010 is reproduced hereunder:-

"Invoking the provisions of Clause 15 of Letters patent, this Memorandum of Appeal has been directed against the order, dated 17.12.2007 and made in the Writ Petition in W.P. (MD). No. 10510 of 2007 on the file of this Court.

2. The appellants herein are the respondents in the above writ petition, whereas the respondent herein is the petitioner.

3. For the sake of convenience and easy reference, the respondent herein-after be referred to as the petitioner and the appellants be referred to as the respondents, wherever the context so require.

4. It is manifested from the records that the petitioner has filed a writ petition in W.P. (MD). No. 10510 of 2007 on the file of this Court, seeking the relief of Certiorarified Mandamus, in the nature of Writ, calling for the records relating to the order of the second respondent in O. Mu. No. 1211/A2/07, dated 19.06.2007 and to quash the same and also to direct the respondents to sanction one set of incentive increment for M. Phil, to the petitioner with effect from 23.10.1996 and confer all the consequential benefits.

5. Despite the strenuous contest made by the respondents, on considering the related facts and circumstances, which includes the materials placed before the learned single Judge of this Court, he proceeded to allow the said writ position, after setting aside the impugned order of the second respondent, dated 19.06.2007 and equally, issued a direction to the respondents to sanction the incentive increment for M. Phil. Within a period of eight weeks from the date of receipt of a copy of this order.

6. Impugning the above said order, dated 17.12.2007, the respondents being the

Director of School Education, Chennai-6, the Chief Educational Officer, Tirunelveli, the District Educational Officer, Tirunelveli and the Headmaster, Government Higher Secondary School, Ilayarasanaenthal, Sankarankovil Taluk, Tirunelveli District, have approached this Court by way of this appeal.

7. Heard, Mr. V.R. Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr. V. Paneerselvam, learned counsel appearing for M/s. C.S. Associates, who in on record for the respondent.

8. It is obvious to note here that the petitioner Mr. P.I. Anand has been working as P.G. Assistant in the 4th respondent Government Higher Secondary School, Elayarasanaenthal, Sankarankovil Taluk, Tirunelveli District. While he was working as PG Assistant, he acquired M. Phil degree in 1996 and in this connection, a viva voce was held on 22.10.1996. In pursuant to the Government Order in G.O. Ms. No. 1170, Education, dated 20.12.1993, he had made a representation to the respondents, claiming one set of incentive increment for M. Phil in the cadre of P.G. Assistant. However, the second respondent viz., the Chief Educational Officer, Tirunelveli, had rejected his request, by his order, dated 19.06.2007 on the ground that a teacher is entitled to only two sets of incentive increment and there is no provision for 3rd set of incentive increment. Challenging this order, dated 9.06.2007, the petitioner has filed the above said writ petition before this Court.

9. When this appeal came up for hearing, Mr. V.R. Shanmuganathan, learned Special Government Pleader has adverted to that the petitioner had already been granted with two sets of incentive increments for his B.Ed. and M.Ed., degree, as per the orders of the Government in G.O. Ms. No. 42, Education Department, dated 10.01.1969 and as such, the petitioner is not at all eligible for the 3rd set of incentive increment, as per the above said G.O. Ms. No. 42, Education Department, dated 10.01.1969, G.O. Ms. No. 1024, School Education Department, dated 20.12.1993 and G.O. Ms. No. 194, School Education Department, dated 10.10.2006.

10. He has also maintained that a Graduate Teacher, who possessed with Higher educational qualification is eligible for only two set of incentive increment for the entire period of service as per para 3 of G.O. Ms. No. 1024, School Education Department, dated 09.02.1993 and he, therefore, has urged that the order of the learned single Judge of this Court, dated 17.12.2007 might be set aside.

11. On the other hand, Mr. V. Paneerselvam, while advancing his argument, has drawn our attention to the Government Order in G.O. Ms. No. 42, Education Department, dated 10.01.1969, G.O. Ms. No. 747, Finance (Pay Cell) Department, dated 08.08.1986, G.O. Ms. No. 1023, Education Department, dated 09.12.1993, G.O. Ms. No. 1024, Education Science and Technology Department, dated 09.12.1993 and G.O. Ms. No. 1170 Education Science and Technology Department, dated 20.12.1993 and G.O. Ms. No. 194, School Education Department, dated 10.10.2006.

12. G.O. Ms. No. 42, Education Department, dated 10.01.1969 has imposed a ceiling in granting advance increments to a teacher having higher educational qualification. It does not specify the M. Phil qualification. As per this G.O., Secondary Grade Teachers and B.T. Teachers are eligible for advance increment for acquiring higher educational qualification as detailed below.

13. Secondary Grade Teachers:-

A Secondary Grade Teacher is eligible for two advance increments, when he acquired B.T. or B.Ed. qualification. He is again eligible for advance increment, when he acquires M.A. or M.Sc. or M.Ed. qualification.

14. B.T. Teachers:-

B.T. Teacher is eligible for two advance increments for passing M.A. or M.Sc., qualification. Again, he is eligible for two advance increments for M.Ed., qualification.

15. As argued by Mr. V.R. Shanmuganathan, learned Special Government Pleader, when the P.G. Assistants in Higher Secondary Schools were denied incentive for higher qualification on the ground that G.O. Ms. No. 42, dated 10.01.1969 is not applicable to the Higher Secondary service, they moved the Government and Government has also issued an order for incentive increments to Head Masters and P.G. Assistants, who are the members of the Higher Secondary Service in G.O. Ms. No. 747, Finance, dated 18.08.1985, where by the Government has ordered for incentive increments to Headmasters and PG Assistants, who are the members of the Higher Secondary service. In pursuant to the above G.O. Ms. No. 747, the PG Assistants are also made eligible for incentive increments for first time only.

16. Sub-Clause (i) to clause 2 of the above said Government Order reads as under:-

"The Government has accepted the recommendation of the One Man Committee and issued the following order:-

"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."

17. As it is revealed from G.O. Ms. No. 1023, Education Department. Dated 09.12.1993, a Secondary Grade Teacher is eligible for two advance increments for passing B.Ed. qualification, got another two advance increments for acquiring M.A. qualification, while working in the post of B.T. Assistant. He acquired M.Ed., degree and represented for sanction of two more increments. His request was not considered by the Government. However, he approached this Court and this Court, while passing orders in W.P. No. 5191 of 1986 on 21.10.1986 has observed as follows:-

"There is no dispute that G.O. Ms. No. 42, Education Department, dated

10.01.1969, must apparently govern the award of the two incentive increments from the petitioner acquiring M.Ed., degree from 1976. But, what is put against the petitioner in letter Ms. No. 590, Education, dated 29.03.1976, where a limitation is prescribed that there could be only four advance increments for acquiring higher qualifications, certainly, this letter cannot override the Government Order, referred to above. Practically, the impugned order refers to and relies upon this letter alone that is not permissible. Accordingly, the writ petition is allowed."

18. Based on the above orders of the High Court, the individual was allowed to get the 5th and 6th increments. The G.O. Ms. No. 1023, dated 09.12.1993 also reads that:-

"Persons placed on similar circumstances had also represented for sanction of 5th and 6th increments and it is considered that normally a decision taken in one case would be of general applicability and will have to be made applicable in all similar cases."

19. Following the G.O. Ms. No. 1023, dated 09.12.1993, the Government has also passed another G.O. Ms. No. 1024, Education, Science and Technology Department, dated 09.12.1993.

20. The G.O. Ms. No. 1024, Education, Science & Technology Department, dated 09.12.1993 has also been passed in similar circumstances, as narrated in G.O. Ms. No. 1023 and clause 3, caused necessary amendment to the G.O. Ms. No. 42, Education, dated 10.01.1969. As per clause (ii), the maximum number of advance increments, which a teacher, can get under the scheme of incentive increments under this Government Order shall be four in his entire service.

21. As it is seen from the G.O. Ms. No. 1170, Education, Science and Technology Department, dated 20.12.1993, representations were received by the Government that the post-Graduate Assistants are now getting only one increment for higher qualification, whereas the other categories of teaching staff (i.e.,) Secondary Grade Teachers/School Assistants are getting two incentive increments for higher qualification. The Tamil Nadu Higher Secondary Post-Graduate Teachers Association has, therefore, requested that the Post Graduate Teachers can be sanctioned an incentive increment for higher qualification (viz.,) M. Phil/Ph.D./PGDTE. The Director of School Education has recommended the request of the Association.

22. It is also seen from the above said Government Order, the Government has accepted the request of the Director of School Education and issued 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 advanced increments.

(ii) This incentive increment shall be given only, to those who possess the said

higher qualification as on 01.03.1993 and this concession will not be extended in future.

23. On coming to the instant case on hand, it is significant to note here that the petitioner has obtained M. Phil., degree in the year 1996. But clause II of G.O. Ms. No. 1170, dated 20.12.1993, stipulates that the incentive increment shall be given to only those who possess the said higher educational qualification as on 01.03.1993. It is also imposed a condition that this concession will not be extended in future.

24. Considering this aspect, a crucial question arises for our consideration is as to whether the petitioner herein is entitled to avail the benefit of G.O. Ms. No. 1170, Education, Science and Technology Department, dated 20.12.1993.

25. In this connection, Mr. V. Panneerselvan, learned counsel appearing for the petitioner has argued that on earlier occasion, when the third set of increment was rejected on the ground that they were not entitled for third set of increment, a writ petition in W.P. No. 17884 of 1998 was filed.

26. This Court had taken up the above said Writ petition along with the batch of writ petitions and after hearing both sides, this Court had rendered a finding saying that the incentive increments sanctioned in the previous position i.e., in the cadre of Secondary Grade Teacher or B.T. Assistant could not be taken into account, because P.G. Assistant is separate Cadre and in that Cadre, the teachers are entitled for incentive increment pursuant to the G.O. Ms. No. 1170, dated 20.12.1993.

27. Mr. Pannerselvam has also added that this order was challenged in the writ appeal in W.A. No. 2604 of 1999 etc. before the Division Bench of this Court, wherein the Division Bench on 20.06.2006 has dismissed the writ appeal confirming the order passed in the Writ Petition with the finding that P.G. Assistants are entitled for 3rd set of incentive increment.

28. Mr. V. Paneerselvam has also brought to our notice that in pursuance of the order of the Division Bench of this Court, the Government had proceeded to pass an order in G.O. Ms. No. 194, School Education, dated 10.10.2006, wherein the Government has stated as under:-

"Hence, the Director of School Education recommended that in order to implement the verdict of the High Court, Chennai, dated 20.06.2006, the date 01.03.1993 can be omitted in the page 3 of the G.O. Ms. No. 1170 of the Education Science and Technology Department, dated 20.12.1993.

29. It is also apparent that an amendment in G.O. Ms. No. 1170 of Education Science and Technology Department, dated 20.12.1993 at page 3(11) has also been made deleting page 3(11) of G.O. Ms. No. 1170, dated 20.12.1993.

30. We have also perused the order of the learned single Judge of this Court, dated 17.12.2007, which is challenged in this Writ Appeal.

31. The learned Single Judge of this Court has also made reference to the judgment of the Division Bench of this Court in W.A. Nos. 2604 to 2606 of 1999, dated 20.06.2006 and ultimately, he has concluded that following the said judgments, the impugned order passed by the second respondent dated 19.06.2007 is set aside with a direction to the respondents to sanction the incentive increment within a period of eight weeks from the date of receipt of a copy of this order.

32. We have carefully and cautiously perused the grounds of memorandum of appeal along with the impugned order passed by the learned single judge of this Court.

33. We have also perused thoroughly the above cited Government Orders. Having regard to all the related facts and circumstances of the case, we do not find any discrepancy or infirmity in the order which is challenged in this Writ appeal.

34. Keeping in view of the above facts, we find that the writ appeal is deserved to be dismissed.

35. Accordingly, the Writ Appeal is dismissed. The impugned order, dated 17.12.2007 and made in W.P. (MD). No. 10510 of 2007 is confirmed. The appellants are directed to sanction the incentive increments for M. Phil degree for the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

Following the above said decision, the present appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.