

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2016

Coram

The Honourable Mr. JUSTICE M.SATHYANARAYANAN

Writ Petition No.43731 of 2016  
and  
W.M.P.Nos.37537 to 37539

S.Ambethkar

... Petitioner

-Vs-

1. The Government of TamilNadu,  
Department of School Education,  
Secretariat, Chennai - 600 009.
2. The Director of School Education  
Director of School Education,  
D.P.I. Complex,  
College Road,  
Chennai - 600 006.
3. The Chief Educational Officer,  
Kancheepuram District,  
Kancheepuram.
4. The District Educational Officer,  
Chengalpet, Kancheepuram District.
5. The Head Master,  
Government High School,  
Ramapuram, Madurandakam,  
Kancheepuram District.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the third respondent vide O.Mu.No.4661/A4/2016 dated 04.08.2016 and quash the same and consequently direct the respondents to grant selection grade to the petitioner on the proposal sent by the 5th respondent and further forbearing the respondent from making recovery of the alleged excess payment of incentive increment granted for acquiring M.Phil., for the period from 03.12.2007 to 17.01.2013 from the petitioner's salary.

For Petitioner : Mr.A.Nagarathinam

For Respondents : Mr.O.R.Mahesvaren,  
Government Advocate

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner would state that he has passed B.A. (English), M.A., and B.Ed., degrees and got appointed as B.T.Assistant (English) on 01.07.2004 in Panchayat Middle School, Sanjeevanoor, Jolarpet Union, Vellore District by order dated 27.06.2004. The petitioner was initially appointed on consolidated salary and subsequently, his service was regularised by an order dated 01.06.2006, issued by Assistant Elementary Educational Officer, Jolarpet. The petitioner has also successfully completed his probation on 31.05.2008. The petitioner acquired M.Phil. degree on 31.07.2007 and in terms of G.O.(1D) No.18, School Education Department dated 18.01.2013, he was granted incentive increment with effect from 03.12.2007. The petitioner has completed 10 years of service. Therefore, the 5th respondent sent a proposal on 14.04.2016 praying for permission for grant of selection grade scale of pay to the petitioner. However, the 3rd respondent, on receiving the same, issued the impugned proceedings dated 04.08.2016 rejecting the said proposal on the ground that the incentive increment can be given only as per G.O.(1D)No.18 School Education Department dated 18.01.2013 and therefore, ordered for recovery of the excess payment of incentive increment and challenging the legality of the same, the petitioner came forward to file this writ petition.

3. Learned counsel for the petitioner would submit that admittedly, before the order of recovery, the petitioner was not put on notice and the impugned order was also not communicated to him and a direction was issued to the 5th respondent to recover the same and also to make necessary entries in the service records and the said order is in violation of principles of natural justice and prays for quashment of the impugned order.

4. Per contra, Mr.O.R.Mahesvaren, learned Government Advocate would submit that since the incentive increment paid to the petitioner was not in terms of G.O.(1D)No.18 School Education Department dated 18.01.2013, the 3rd respondent has ordered for recovery of the excess amount and hence, prays for dismissal of the writ petition.

5. This Court, considered the rival submissions and perused the materials available.

6. A perusal of the impugned order would disclose that before recovering the excessive payment of incentive increment for the period between 03.12.2007 and 17.01.2013 and the consequential order of making necessary entries in the service book, the petitioner was not at all put on notice and the impugned order was not communicated to the petitioner. Therefore, in the considered opinion of the Court, the impugned order is in gross violation of principles of natural justice for the reason that before ordering recovery with further direction to make entry in the service record, the petitioner ought to have put on notice. Unfortunately, the 3rd respondent failed to do so and the impugned order was also not communicated to the petitioner. Hence, it warrants interference of this Court. Accordingly, the writ petition is partly allowed. The impugned order dated 04.08.2016 passed by the 3rd respondent is set aside and the matter is remanded back to the 3rd respondent who shall issue notice to the petitioner as to the recovery of excess payment of incentive increment within a period of four weeks from the date of receipt of a copy of this order and the petitioner, on receipt of the same, is directed to submit his explanation within a further period of three weeks thereafter and the 3rd respondent on receipt of the same, is directed to dispose of the same on merits and in accordance with law within a further period of four weeks thereafter and communicate the decision to the petitioner as well as the 5th respondent. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsj

To

1. The Department of School Education,  
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Chennai - 600 009.
2. The Director of School Education  
Director of School Education,  
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5. The Head Master,  
Government High School,  
Ramapuram,  
Madurandakam,  
Kancheepuram District.

+1cc to Mr.Nagarathinam, Advocate, S.R.No.74118  
+1cc to the Government Pleader, S.R.No.74440

Writ Petition No.43731 of 2016

MP (CO)  
GN (12/01/2017)



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