

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.35977 of 2004
and W.P.M.P.No.43277 of 2004

R.Authimoolam .. Petitioner

Vs

The Assistant Elementary Educational Officer,
Kattankolathur,
Kancheepuram District. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent in Na.Ka.No.950/A2/99 dated 16.04.2002 and quash the same and direct the respondent to sanction the encashment of earned leave and leave on half pay to the petitioner.

For Petitioner : Mr.P.Manojkumar

For Respondent : Mr.M.Elumalai, Govt. Advocate

O R D E R

The petitioner filed this writ petition challenging the recovery order dated 16.04.2002, wherein, the incentives granted in favour of the petitioner for acquiring M.A. Degree through Open University System was not permitted.

2. The facts of the case are that the petitioner worked as Head Master in the Panchayat Union Elementary School, Nandhivaram, Kattankolathur Block, Kancheepuram District. On 31.01.1999, the petitioner retired from service. After retirement, the impugned order of recovery was passed without any notice or any enquiry, on the ground that the petitioner obtained two incentives for acquiring M.A. Degree from Annamalai Open University without obtaining the basic degree and securing M.A. Degree through Open Stream and that the incentives for acquiring M.A. Degree through Open Stream are permissible only after 2000. Accordingly, the

recovery order was passed.

3. When the similar type of case came up before this Court, this Court, by its order dated 09.12.2002 in W.P.No.12912 of 1999, set aside the recovery order passed by the respondent. Relevant portion of the order as follows :

"9. The learned Additional Government Pleader submitted that subsequent G.O.Ms.No.307 School Education [E2] Department dated 15.12.2000 has not been challenged by the petitioner. It is well settled that any provisions contained in any Act, Statutory Rules or even Administrative Instruction should be construed in consonance with the Provisions, particularly, Article 14, contained in the Constitution of India. G.O.Ms.No.307 dated 15.12.2000 appears to be clarificatory in nature. When the Government have already extended the benefit of the Degrees from the Annamalai Open University for the purpose of appointment in public services, there is no justification in denying such Degree for the purpose of grant of incentive increments in public services.

10. The learned Additional Government Pleader has relied on the decision rendered in W.P.Nos.1256 and 5657 of 1999 dated 25.04.2002 to the effect that person acquiring M.A. Degree from the Open University System is not entitled to claim promotion. In the present case, the Government have already recognised the right of the person passing from Mysore Open University for the purpose of giving incentive increments and since there is no difference between the Degrees issued by the Mysore Open University and Annamalai Open University and since the Degrees issued by Annamalai Open University have been recognised by the State Government and University Grants Commission, there cannot be any justification to deny such incentive benefits. The decision cited above is distinguishable, as similar question never came up for consideration in that case.

11. Apart from above, there is also justification in the contention of the Counsel appearing for the petitioner that assuming that the benefit which was not available has been granted, there is no justification for the Government to withdraw the same. The benefit had been granted by the Government itself and the amount had already been disbursed. Even assuming that such amount has been paid to the petitioner on an erroneous basis, the error, if any, was of the Government and not of the petitioner and as such, the Government is

estopped from recovering the amount already disbursed to the petitioner.

12. For the aforesaid reasons, the writ petition is allowed and it is ordered that the amount already recovered should be refunded and further all the arrears should be paid within a period of four months. No costs."

4. On a perusal of the above order, it is clear that the facts stated therein, apply to the present case on hand. Hence, I am inclined to grant the relief sought for in the present petition. Accordingly, the Writ Petition is allowed and the impugned order dated 16.04.2002 is set aside. Since the impugned order is set aside, the respondent is directed to release the benefits which was withheld by them and the said exercise shall be complied with, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Assistant Elementary Educational Officer,
Kattankolathur,
Kancheepuram District.

+1cc to Government Pleader sr.62856

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W.P.M.P.No.43277 of 2004

msm(co)
ss(27/9/2017)