

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.18708 of 2004 and
WMP.No.22339 of 2004 and
WPMP.No.19 of 2015

K.Anbalagi

.. Petitioner

vs

1.The Director of School Education,
College Road,
Chennai-600 006.

2.The Chief Educational Officer,
Cuddalore Post,
Cuddalore District.

3.The Head Master,
Government Higher Secondary School,
Reddiyur Post,
Cuddalore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari, calling for the records relating to the second respondent in his Proceedings Na.Ka.No.11783/B2/2003, dated 15.02.2004 and consequential order issued by him in Na.Ka.No.11783/B2/2003, dated 23.04.2004 and quash the same as illegal.

For Petitioner : Mr.A.Ansar

For Respondents : Mr.A.Rajaperumal
Additional Govt. Pleader

ORDER

This writ petition has been filed by the petitioner seeking to quash the impugned proceedings of the second respondent dated 15.02.2004 and 23.04.2004 respectively, wherein the second respondent instructed the third respondent to effect recovery of the amount of the incentive increments awarded to the petitioner from her salary with effect from 06.10.1988.

2. The case of the petitioner is that on 21.02.1988, the petitioner was appointed as P.G. Assistant Teacher by the first respondent by direct recruitment. Pursuant to the appointment order, the petitioner joined the service as P.G. Assistant Teacher on 06.10.1988 in the third respondent school and she was working as such in the third respondent school. Further case of the petitioner is that she was awarded incentive increments for having acquired M.Ed. qualification with effect from 06.10.1988.

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3. According to the petitioner, prior to her service as P.G. Assistant Teacher, she was appointed as B.T. Assistant under the direct recruitment. The services of the petitioner as B.T. Assistant and

P.G. Assistant Teacher are different and the latter is not a continuation of her earlier appointment. Therefore, the petitioner is entitled to get the incentive increments in the service as P.G. Assistant Teacher. While so, the second respondent, without considering the representation of the petitioner in a proper perspective, issued the impugned proceedings instructing the third respondent to effect recovery from the petitioner's salary.

4. On the side of the respondents, no counter affidavit has been filed.

5. I heard Mr.A.Ansar, learned counsel appearing for the petitioner and Mr.A.Rajaperumal, learned Additional Government Pleader appearing for the respondents.

6. The learned counsel for the petitioner submitted that the impugned proceedings of recovery were issued on the premise that the petitioner was awarded incentive increments while she was employed as B.T. Assistant and therefore, she is not entitled to any incentive increment for acquiring the same qualification while she was working as P.G. Assistant Teacher and the same was not correct as the

appointment of the petitioner as P.G. Assistant Teacher is a fresh one. He submitted that the appointment of the petitioner as P.G. Assistant Teacher was by direct recruitment and it is not in continuation of the earlier services of the petitioner as B.T. Assistant.

7. There is no dispute that the petitioner was earlier appointed as B.T. Assistant with effect from 15.11.1985 at the Government High School, Kalappal in Tanjore District and while she was working as B.T. Assistant, she acquired M.Ed. qualification, for which she was awarded incentive increment on 22.01.1986. Thereafter, the petitioner was not continuing her service as B.T. Assistant on account of her direct recruitment as P.G. Assistant and she left her service as B.T. Assistant on 30.09.1988. There is also no dispute that while the petitioner was working as P.G. Assistant, she was awarded incentive increments for having acquired M.Ed. qualification with effect from 06.10.1988.

8. On a perusal of the impugned orders, I find that the second respondent instructed the third respondent to effect recovery of the amount of the incentive increments awarded to her from the salary with effect from 06.10.1988 on the ground that the petitioner

has already been granted the benefit of incentive increments, while she was working as B.T. Assistant on 22.01.1986.

9. It is to be noted that the impugned recovery proceedings were issued after 16 years that too without issuing any prior notice or opportunity of hearing. Therefore, as rightly argued by the learned counsel for the petitioner the impugned proceedings are in violation of the principles of nature justice.

10. In the case on hand, the respondents have failed to produce any material to show that the service of the petitioner as B.T. Assistant was in continuation of her subsequent appointment as P.G. Assistant. The respondents have also failed to show any rule or law that the petitioner is not entitled to get incentive increments in the post of P.G. Assistant Teacher.

11. The very purpose of granting incentive increment is to encourage the teachers to acquire higher qualification as the same would ultimately benefit the students. The knowledge acquired by the teachers by acquiring higher qualification is rewarded by way of incentive increment only for the benefit of the students.

12. It is pertinent to note that G.O.Ms.No.42, dated 10.01.1969 indicates that if a person possessing higher qualification enters into service, his/her initial pay may be fixed by giving advance increments.

13. The learned counsel for the petitioner submitted that the appointment of the petitioner as P.G. Assistant Teacher by direct recruitment is fresh service and, therefore, she is entitled to get the incentive increments. To rebut the same, the respondents have not produced any proof to show that the service rendered by the petitioner as P.G. Assistant Teacher was in continuation of the service as B.T. Assistant and therefore, she is not entitled to get incentive increments in the post of P.G. Assistant and the amounts already paid to her are liable to be refunded.

14. In *Nand Kishore Sharma and others v. State of Bihar and others*, reported in (1995) Supp 3 SCC 722, while considering the question of recovery of the amount paid by mistake, the Hon'ble Supreme Court held as under:

"2. But at the same time, we are of the view that the appellants cannot be blamed. The Anomaly

Committee recommended grant of higher pay scales to them. The Finance Department also concurred with the same and as a result thereafter the appellants were given the pay scales and were disbursed the arrears as a lump sum. Having paid the arrears to the appellants, the State Government could not have reversed the same specially without complying with the rules of natural justice."

15. It is also settled that where excess payment is made not on account of any erroneous representation of the employee, but on the basis of error committed by the authorities, such amount need not be recovered from the employee.

16. Admittedly, there is no proof to show that by erroneous representation of the petitioner, she was awarded incentive increments while working as P.G. Assistant. Therefore, there is nothing to indicate that the petitioner had made any misrepresentation in this matter. Since the incentive increments had already been paid and obviously spent by the petitioner thinking that she was entitled to such increments, it would cause undue hardship if at a distant point of time

such amount is recovered. That part, by virtue of the interim order of stay of recovery, nothing has been recovered from the petitioner till date.

17. Though in the impugned proceedings dated 15.02.2004, it has been stated that under the Government Order, a person is entitled to get incentive increments only one time, there is no indication as to the Government Order or Rule, prohibiting the petitioner in awarding incentive increments in the post of P.G. Assistant. As stated supra, the appointment of the petitioner as P.G. Assistant was in the year 1988 and the impugned proceedings were issued in 2004. For 16 years, the respondents had slept over the issue and all of a sudden in 2004 woke up from slumber and issued impugned recovery proceedings. Since there is no convincing explanation from the side of the respondents for inaction on their part for these years and as also there is no mistake or misrepresentation on the part of the petitioner in getting the incentive increments, I am of the view that the impugned proceedings cannot be sustained.

18. The writ petition is allowed and the impugned proceedings of the second respondent in Na.Ka.No.11783/B2/2003,

dated 15.02.2004 and the consequential proceedings in Na.Ka.No.11783/B2/2003, dated 23.04.2004 are quashed. No costs. Consequently, WMP.No.22339 of 2004 and WPMP.No.19 of 2015 are closed.

08.08.2017

Note: Issue order copy on 08.05.2018
vs

Index : Yes
Internet : Yes

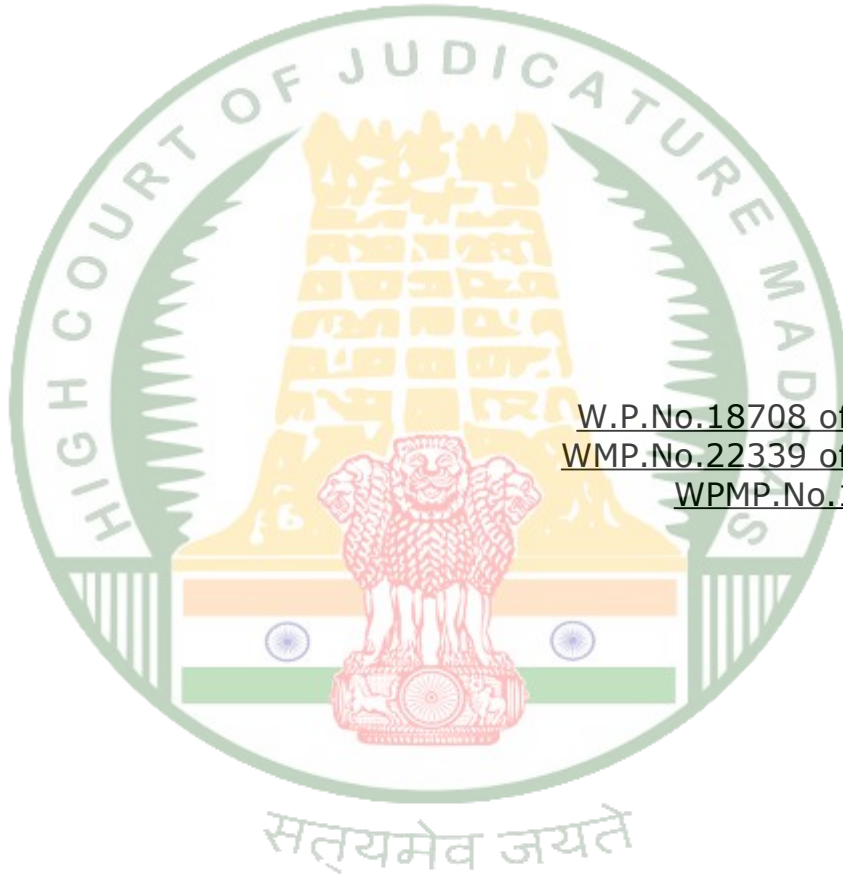
To

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M.V.MURALIDARAN, J.

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