



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) .No.241 of 2017 &
C.M.P. (MD) .No.2464 of 2017

S.K.Kannan

...Appellant/Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
For st. George,
Chennai 600 009.

2.The Director of School Education,
Office of the Director of School Education,
Chennai 600 006.

3.The Chief Educational Officer,
Virudhunagar District.

4.A.Namachivayam
The Assistant Elementary Educational Officer,
Thirupparamkundram, Madurai District.

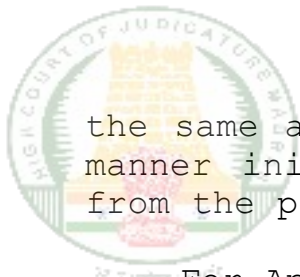
5.The Head Master,
Government Higher Secondary School,
Nadayaneri,
Virudhungar District.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clauses 15 of Letters Patent against the order dated 02.02.2017 made in W.P.(MD).No.1753 of 2017.

Prayer in WP(MD). 1753/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of 4th respondent in Na.Ka.638/A1/2016 dated 3.1.2017 and impugned order of 3rd respondent in Na.Ka.No.8719/AA2/2016 dated 29.12.2016 signed on 3.1.2017 quash



the same and consequently forbear the respondents herein from any manner initiating any action for recovery of incentive increment from the petitioner paid in accordance with law.

For Appellant : Mr.K.Appadurai
For R1 to R3 & R5 : Mr.VR.Shanmuganathan
Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by **T.S.SIVAGNANAM, J**]

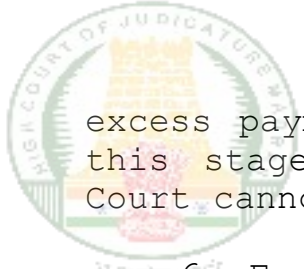
Heard Mr.K.Appadurai, learned counsel appearing for the appellant and Mr.VR.Shanmuganathan, learned Special Government Pleader, who accepts notice on behalf of the official respondents.

2. By consent on either side, the writ appeal is taken up for final disposal.

3. The appellant has filed this appeal challenging the order passed in W.P.(MD).No.1753 of 2017, wherein the writ petitioner challenged the order passed by the third respondent, dated 29.12.2016 and the consequential recovery order of the fourth respondent, dated 03.11.2016.

4. The appellant approached the Writ Court with a short ground that no opportunity was granted to him before the order of recovery was passed. The respondents resisted the prayer in the writ petition by stating that in the order of granting incentive increment to the appellant itself there is a clause that in the event of audit objection, the appellant has to remit the entire amount in one time payment and therefore, the impugned orders are perfectly valid. The learned single Judge taking note of the Hon'ble Supreme Court judgment in High Court of Punjab vs. Jagdev Singh (Civil Appeal No.3500 of 2006, dated 29.07.2016) to held that when the order granting incentive increment contains a clause that in case of audit objection, the appellant shall repay the entire amount, there is no purpose or necessity for issuing a notice. This order is put to challenge before this Court.

5. After hearing the learned counsel for the parties, we find that the appellant has not been informed as to the basis on which the incentive increment granted to him is sought to be recovered. It may be true that the appellant has given an undertaking. If the department relies on an audit objection, which states that the appellant is not entitled for those increment, then the appellant is entitled to know the basis of such observations by the audit department. The impugned orders do not disclose as to what is the basis of the audit objection. The decision of the Hon'ble Supreme Court in High Court of Punjab vs. Jagdev Singh (stated supra) arises in a slightly different set of facts, where there was



excess payment made towards the respondent therein. Therefore, at this stage of the matter, the decision of the Hon'ble Supreme Court cannot be applied to the appellant's case.

6. For the above reasons, the writ appeal is allowed and the order passed in the writ petition is set aside with a direction to the 3rd respondent to furnish the basis of the audit objections and all other relevant details and afford an opportunity to the appellant to submit his objections and after considering the objections that may be submitted by the appellant, the third respondent is directed to pass appropriate orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
School Education Department,
For st. George,
Chennai 600 009.
- 2.The Director of School Education,
Office of the Director of School Education,
Chennai 600 006.
- 3.The Chief Educational Officer,
Virudhunagar District.
- 4.The Head Master,
Government Higher Secondary School,
Nadayaneri,
Virudhungar District.

+1 cc to Mr.K.Appadurai , Advocate in SR.No. 14861

+1 cc to Special Government Pleader, SR.No:15090

jikr

AE/RR/23.03.2017/3P/7C

JUDGMENT MADE IN
W.A. (MD) .No.241 of 2017 &
C.M.P. (MD) .No.2464 of 2017
15.03.2017