



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2017

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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. (MD) No.1388 of 2011
and
C.M.P (MD) Nos.1 of 2011 & 1 of 2012

S.Arockia Samy

.. Appellant

Vs

1. The Chief Educational Officer,
Dindigul Educational District,
Dindigul.
2. The Head master
Government Higher Secondary School,
N.Panjampatti-Dindigul District.

.. Respondents

PRAYER: Writ Appeal is filed under clause 15 of Letter Patent Act, against the order dated 13.10.2011 by this Court in W.P.(MD)No.11642 of 2011.

Prayer in WP(MD) . 11642/ 2011 :

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 in R.C.No.3533/A4/2008 dated 20.09.2011 on the file of the 1st respondent and quash the same as illegal and unsustainable and consequently direct the first respondent to refund Rs.2,958/- as deducted from the Petitioner's salary.

For Appellant : Mr.J.Lawrance

For Respondents : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

**JUDGMENT**

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

The unsuccessful Writ Petitioner has filed this writ Appeal questioning the order dated 13.10.2011 dismissing W.P.(MD)No.11642 of 2011.

2. The case of the appellant is that he was appointed as Secondary Grade Physical Education Teacher in Assumption Aided Secondary School on 07.06.1989. He was receiving incentive increments in the said School till 16.03.1998. After getting relieved from the said school, he joined in the second respondent Government Higher Secondary School, N.Panchampatty on 17.03.1998.

3. In the year 2001, an audit was conducted and it was alleged that grant of incentive increment to the appellant herein, from 07.06.1989 to 16.03.1998, was erroneous. Therefore, it was recommended to recover the increments, already received by him. Since, an order of recovery was passed without notice to the appellant herein, the appellant filed W.P.(MD)No.1863 of 2008 and the same was allowed and the matter was remitted to the file of the first respondent.

4. The first respondent gave a show cause notice to the appellant and after receiving reply from the appellant passed the impugned order dated 20.09.2011. The first respondent directed the appellant herein to repay the amount of Rs.15,558/-, who questioned the same by filing in W.P.(MD)No.11642 of 2011. The learned Single Judge dismissed the same by order dated 13.10.2011. Hence this intra-court appeal has been filed.

5. Heard the learned counsel for the appellant as well as the learned Additional Government Pleader.

6. It is seen that the appellant was appointed as Physical Education Teacher in an aided private school at Chennai on 07.06.1989. He possessed the qualification of B.P.Ed, which was a basic qualification for being appointed as Physical Education Teacher. Even though the appellant was not having any higher qualification, the correspondent of Assumption Aided Higher Secondary School, Chennai had wrongly sanctioned the incentive increments to the Writ Petitioner during the period from 07.06.1989 to 16.03.1998. Actually, the appellant was not entitled to receive the same. When the said error was identified during audit, an order of recovery was made.

7. The learned Single Judge further noted in the present case. Recovery was ordered to be made in 16 monthly installments. The appellant is also continuing to work as a teacher. Therefore, there is no question of the appellant suffering any undue hardship. The Writ Petition was rightly dismissed.



8. We find no merit in this Appeal. Accordingly, this Writ Appeal is dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Educational Officer,
Dindigul Educational District,
Dindigul.
2. The Head master
Government Higher Secondary School,
N.Panjampatti-Dindigul District.

+ 1 CC TO Mr.J.LAWRANCE, ADVOCATE IN SR No. 68120
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 68699

PSD/TA/MRN
TE/SKN-RSK/SAR-IV : 10/08/2017 : 3P/5C

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