



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD)No.12824 & 12825 of 2013

and

M.P.(MD) Nos.1, 1, 2, 2, 3 and 3 of 2013

in W.P.(MD)No.12824 of 2013

P.Prakasam

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
Office of Director of School Education,
Chennai - 600 006.
3. The Chief Educational Officer,
Theni,
Theni District.
4. The Headmaster,
Government High School,
Sankarapuram,
Theni District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter of the first respondent in Lr.No.129, School Education ((Paka5(2) 2013-1) dated 17.07.2013 and the consequent impugned order of third respondent in Na.Ka.No.4797/A3/2013 dated 16.07.2013 and the impugned order of the fourth respondent in Na.Ka.No.56/2013 dated 25.07.2013 and quash the same as illegal and consequently direct the respondents herein to fix the pay and increment for acquiring M.Phil., qualification from the date of his joining on 09.07.2004 as per the principles and object in the grant of incentive increments for acquiring higher qualifications on par other teachers within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.R.Sethuraman

Special Government Pleader



in W.P. (MD) No. 12825 of 2013

S. Jeyakumar

... Petitioner

Vs.

WEB COPY

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
Office of Director of School Education,
Chennai - 600 006.
3. The Chief Educational Officer,
Theni,
Theni District.
4. The Headmistress,
Government Higher Secondary School,
Odipatti,
Theni District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter of the first respondent in Lr.No.129, School Education ((Paka5(2) 2013-1) dated 17.07.2013 and the consequent impugned order of third respondent in Na.Ka.No.4797/A3/2013 dated 16.07.2013 and the impugned order of the fourth respondent in Na.Ka.No.65/2013 dated 27.07.2013 and quash the same as illegal and consequently direct the respondents herein to fix the pay and increment for acquiring M.Phil., qualification from the date of his joining on 10.07.2004 as per the principles and object in the grant of incentive increments for acquiring higher qualifications on par other teachers within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.R.Sethuraman
Special Government Pleader

C O M M O N O R D E R

The impugned orders of recovery excess payment of incentive increment were issued without any show cause notice and opportunity to the writ petitioners.



2.The learned counsel appearing on behalf of the writ petitioners states that the writ petitioners are working as B.T. Assistants. On account of the acquisition of additional qualification, the incentive increment was already paid to the writ petitioners. However, the increment already paid is sought to be recovered from the salary of the writ petitioners.

3.The learned Special Government Pleader appearing on behalf of the respondents states that the incentive increment was erroneously disbursed to the writ petitioners and accordingly, the competent authority has imposed the recovery in respect of the excess payment already made to the writ petitioners.

4.This Court is of an opinion that the correction of certain errors in respect of grant of pay or fixation is permissible. However, any order affecting the right of an employee cannot be issued without providing an opportunity to the employee concerned. Thus, the opportunity is an essential requirement for the purpose of taking a decision and for passing an order by the competent authorities. Admittedly, no show cause notice or opportunity was provided to the writ petitioners before passing the impugned order of recovery. Thus, the present writ petition is a fit case for remittance.

5.Accordingly, the impugned order passed by the first respondent dated 17.07.2013 and the consequential order passed by the third respondent in Na.Ka.No.4797/A3/2013 dated 16.07.2013 and the impugned order of the fourth respondent in Na.Ka.No.56/2013, 65/2013, dated 25.07.2013, dated 27.07.2013 are quashed and the matter is remitted back to the respondents for re-consideration.

6.Accordingly, the respondents are directed to issue show cause notice to the writ petitioners and on receipt of the explanations / objections from the writ petitioners, decision shall be taken on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

7.Accordingly, the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
Office of Director of School Education,
Chennai - 600 006.
3. The Chief Educational Officer,
Theni,
Theni District.
4. The Headmaster,
Government High School,
Sankarapuram,
Theni District.
5. The Headmistress,
Government Higher Secondary School,
Odipatti,
Theni District.

+2cc to Mr.K.Appadurai, Advocate Sr.No.54786,54787

+1cc to Spl.Government Pleader Sr.No. 55103

MM

VB/SV/MMS/SAR4/20.04.2018/4P/9C

W.P. (MD) No.12824 & 12825 of 2013
13.03.2018