

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M. DHANDAPANI

W.P. No.18952 of 2019

and

W.M.P. Nos.18304, 18305 & 31781 of 2019

M.Ganipandi

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Secretariat, Fort St. George,
Chennai - 600 009.

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

3.The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore Region,
Coimbatore.

4.The Chief Educational Officer,
Coimbatore District,
Coimbatore.

5.The Headmaster,
Government Higher Secondary School,
Sundapalayam,
Coimbatore - 641 007.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of recovery passed by the 3rd respondent in Na.Ka.No.3215/E3/2019 dated 29.01.2019 and consequential impugned order passed by the 5th respondent in Na.Ka.No.32/2019 dated 14.02.2019 and quash the same as illegal and consequently to direct the respondents to sanction incentive increments for possessing M.Phil. in Physical Education, to in the light of the

G.O.Ms.No.324, Education, Science and Technology Department dated 25.04.1995 from the date of petitioner's appointment, i.e. 11.06.2008.

For Petitioner : Mr.Devaraj Mahesh

For Respondents : Mrs.P.Kavitha
Government Advocate

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of recovery passed by the 3rd respondent dated 29.01.2019 and consequential impugned order passed by the 5th respondent dated 14.02.2019 and quash the same as illegal and consequently to direct the respondents to sanction incentive increments for possessing M.Phil. in Physical Education, to the petitioner in the light of the G.O.Ms.No.324, Education, Science and Technology Department dated 25.04.1995.

2.The case of the petitioner is that the petitioner joined the services of the Education Department as a Physical Education Teacher on 08.06.2008. He possessed a higher qualification of M.Ed., M.Phil., even prior to his appointment to the said post. Therefore, he submitted a representation to the Headmaster for grant of incentive increments to him and the same was granted to the petitioner with effect from his date of initial appointment and he was continuously receiving the same. While so, the 3rd respondent, based on an audit report, directed the 5th respondent, vide the impugned order dated 29.01.2019, to recover the incentive increment paid to the petitioner, so far, and the 5th respondent, without giving any opportunity to the petitioner, issued the impugned order dated 14.02.2019 to recover the amount paid as incentive increment to the petitioner from 11.06.2008 to 12.10.2016. Challenging the said impugned orders of recovery, the petitioner has filed the present writ petition.

3.Learned counsel for the petitioner submitted that the petitioner had acquired higher qualification even prior to his appointment and as per G.O.Ms.No.324, Education, Science and Technology Department dated 25.04.1995, the petitioner is eligible for receiving incentive increments, from his date of appointment. It is the main contention of the learned counsel that the impugned orders of recovery have been paid passed by the respondents without giving sufficient opportunity to the petitioner to establish his case.

4.Per contra, learned Government Advocate, appearing for the respondents submitted that, as per G.O.Ms.No.177, School Education Department, dated 13.10.2016, the petitioner is eligible for incentive increment only with effect from 13.10.2016 and hence, the excessive amount paid from 11.06.2008 to 12.10.2016 deserves to be recovered from the petitioner and hence, the writ petition is devoid of merits and prayed for dismissal of the writ petition.

5.Heard the learned counsel on either side and perused the materials available on record.

6.Admittedly, the petitioner has acquired higher qualification even prior to his appointment and he had been paid incentive increment regularly from his date of appointment. However, based on an audit objection, the respondents have now ordered recovery of amount, already paid to the petitioner from 11.06.2008 to 12.10.2016, in the light of G.O.Ms.No.177, School Education Department, dated 13.10.2016.

7.Under these circumstances, this Court deems it fit to remand the matter back to the respondents for issuance of a show cause notice to the petitioner, calling for explanation in this regard. On receipt of such show cause notice, the petitioner shall submit his explanation within a period of two weeks, thereafter, and on receipt of reply/explanation from the petitioner, the respondents shall pass appropriate orders in accordance with law, within a period of four weeks, thereafter.

8.With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(JJ Act)

// True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Secretariat, Fort St. George,
Chennai - 600 009.

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

3.The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore Region,
Coimbatore.

4.The Chief Educational Officer,
Coimbatore District,
Coimbatore.

5.The Headmaster,
Government Higher Secondary School,
Sundapalayam,
Coimbatore - 641 007.

+1cc to Mr.Devaraj Mahesh, Advocate, SR.No.96003.

+1cc to Government Pleader, SR.No.97090.

W.P. No.18952 of 2019

CP(CO)

CSR: 07.01.2020