



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.8990 of 2020

and

W.M.P. (MD) No.8220 of 2020

WEB COPY

V.Muthukannan

... Petitioner

Vs.

1) The District Educational Officer,  
Devakottai,  
Sivagangai District.

2) The Head Master,  
Alagappa Model Higher Secondary School,  
Karaikudi,  
Sivagangai 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 pertaining to the order passed by the 1<sup>st</sup> respondent in his proceedings in Na.Ka.No.1900/A2/2020 dated 16.07.2020 and quash the same and direct the respondents to allow the petitioner to continue to have the same benefit.

For Petitioner

: Mr.V.Panneer Selvam

For R-1

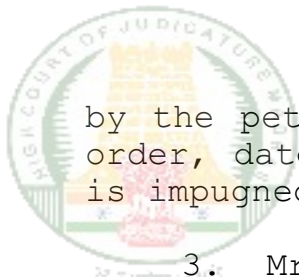
: Mrs.S.Srimathy,

Special Government Pleader

### O R D E R

The prayer sought for in this writ petition is, for a Writ of Certiorarified Mandamus, seeking to call for the records pertaining to the order passed by the 1<sup>st</sup> respondent in his proceedings in Na.Ka.No.1900/A2/2020, dated 16.07.2020 and quash the same and direct the respondents to allow the petitioner to continue to have the same benefit.

2. The case of the petitioner is that, the petitioner has been working as a Physical Education Director at Alagappa Model Higher Secondary School, Karaikudi, Devakottai Educational District Sivagangai Revenue District. Earlier for his acquiring additional qualification, (i.e.) M.Phil ( Master of Philosophy in Physical Education) he was given incentive increment from 28.06.2017. That apart, some encashment of Earned Leave surrender also has been permitted to an extent of Rs.1,15,804/- These two benefits, which were extended to the petitioner, by way of cash incentive obtained



by the petitioner, now sought to be recovered through the impugned order, dated 16.07.2020 passed by the first respondent and the same is impugned herein.

3. Mr.V.Paneer Selvam, learned counsel appearing for the petitioner would submit that, before passing the impugned order, no notice as well as no opportunity was given to the petitioner. Since the impugned order of recovery, which will have an adverse impact on the prospects of the service condition of the petitioner, should not have been passed without issuing a show cause notice. Therefore, on that ground, this writ petition is under challenge.

4. Mrs.S.Srimathy, learned Special Government Pleader appearing for the first respondent, would submit that, in view of the audit objections, the present impugned order has been passed. At any rate, since no show cause notice, prior to the present impugned order has been issued, if the matter is remanded back to the first respondent, such procedure would be adopted and after affording an opportunity to the petitioner, suitable decision would be taken as to whether recovery can be effected from the petitioner.

5. The said submission made by the learned counsel appearing on both sides are hereby recorded and in view of the above that, admittedly, no show cause notice was given before issuing the impugned order, this Court has no hesitation to hold that the impugned order would not be sustained and accordingly, the same is liable to be quashed.

6. Resultantly, the impugned order made in Na.Ka.No.1900/A2/2020, dated 16.07.2020 is quashed and the matter is remanded back to the respondents, especially, the first respondent for reconsideration. While reconsidering the same, proper show cause notice to be given to the petitioner and after affording an opportunity to him, final decision can be taken by the first respondent on merits and in accordance with law.

7. With these observations and directions, the Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.8220 of 2020 is closed.

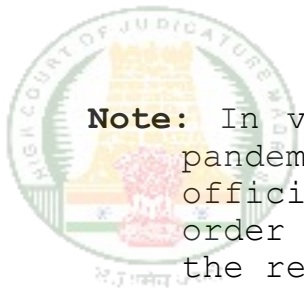
Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

## WEB COPY

To:

The District Educational Officer,  
Devakottai,  
Sivagangai District.

+1 CC to M/s.Government Pleader ( SR-14008[F] dated 13/08/2020 )

W.P. (MD) No.8990 of 2020  
07.08.2020

KB(04.09.2020) 3P 3C