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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21803 of 2021

and

W.M.P.Nos.22992, 22994 & 22995 of 2021

(Through Video Conferencing)

N.Lucky Jawaharlal Nehru ... Petitioner

Vs

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

2.The Director,
Elementary Education,
D.P.I. Compound, College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Nephel Street, Kallakurichi,
Tamil Nadu - 606 202.

4.The District Educational Officer,
Nephel Street, Kallakurichi,
Tamil Nadu - 606 202.

5.Block Educational Officer,
Katchirayapalayam Road,
Near RDO Office, Kallakuruchi,
Tamil Nadu - 606 202.

6.The Headmaster,
Panchayat Union Elementary School,
Mohur, Kallakurichi,
Tamil Nadu - 606 202.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the fifth respondent (Block Educational Officer), which culminated in order made in Na.Ka.No.986/A1/2020



dated 11.02.2021 and Na.Ka.No.986/A1/2020 dated 18.02.2021 leading to recovery from the monthly salary of the petitioner and quash the same as null and void and further direct the fifth respondent (BEO) to reimburse the entire sum of money recovered from the monthly salary of the petitioner commencing from February 2021 onwards together with interest.

For Petitioner : Mr.C.Johnson

For Respondents:

For R1 to R5 : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the first to fifth respondents.

2. The petitioner was issued with a Show Cause Notice dated 11.02.2021 to show cause as to why the amounts paid towards incentive increments should not be recovered from the petitioner.

3. It is the case of the petitioner that the petitioner has not only obtained higher education but also completed degree in B.A(Political Science), M.A(Political Science) apart from B.Ed. It is further case of the petitioner that the Show Cause Notice was served on the petitioner on 11.02.2021 and on the same date the impugned order has been passed ordering recovery.

4. The learned counsel for the petitioner has drawn attention to G.O(Ms).No.1023, Education Department dated 09.12.1993 and submits that the impugned recovery proceedings is contrary to the aforesaid Government Order. In this connection, a reference was made to the following clauses from the aforesaid Government Order:

“(a) SECONDARY GRADE TEACHERS:

A Secondary Grade Teacher is eligible for 2 advance increments when the acquires B.T or B.Ed qualification. He is again eligible for 2 advance increments when the acquires M.A or M.Sc., or M.Ed qualification.

(b) B.T. TEACHER:

A B.T. Teacher is eligible for 2 advance increments for passing M.A or M.Sc., qualification. Again he is eligible for passing M.Ed qualification.”



5. The impugned recovery order is challenged primarily on the ground that no proper reasons have been given for ordering recovery of the incentive increments granted to the petitioner. It is submitted that the increments granted to the petitioner was in terms of G.O(Ms).No.1023, Education Department dated 09.12.1993 and therefore the impugned recovery order is liable to be quashed otherwise on merits.

6. Appearing on behalf of the first to fifth respondents, the learned Government Advocate submits that the incentive increments were granted to the petitioner clearly mentioned that the amount that was transferred subject to recovery after the sanction is contrary to any of the Government Orders. The learned Government Advocate further submits that even in the reply filed on 15.02.2021 the petitioner has admitted that he will admit and accept if any recovery has to be made.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the first to fifth respondents. I have perused the relevant Government Order.

8. The fact whether the petitioner has obtained M.A in discipline which was belatedly communicated is of no consequence as Government Order in G.O(Ms).No.1023, Education Department dated 09.12.1993 is silent on the same.

9. The respondents have not furnished or given any reasons in the Show Cause Notice and called upon the petitioner to show cause as to why the amounts should not be recovered from the petitioner. The entire proceedings is based on an audit objection. The content of the audit objection ought to have been communicated to the petitioner along with the Show Cause Notice for the petitioner to give an appropriate reply.

10. Considering the same, the impugned recovery order is liable to be quashed and the case is to be remitted back to the respondents to pass fresh order on merits in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The respondents shall consider G.O(Ms).No.1023, Education Department dated 09.12.1993 while passing the order.

11. The respondents are also directed to furnish a copy of the audit objection to the petitioner within a period of thirty days from the date of receipt of a copy of this order. On receipt of the aforesaid audit objection, the petitioner shall file a reply within a period of a fifteen days thereafter. The respondents shall thereafter pass appropriate orders on merits in accordance with law after duly considered G.O(Ms).No.1023, Education Department dated 09.12.1993.



12. Pending such exercise, no further recovery shall be made by the respondents. In case the petitioner is eventually eligible for the incentive increments already sanctioned which has been recovered shall be paid back to the petitioner.

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13. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
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Fort St. George, Chennai - 600 009.

2.The Director,
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Near RDO Office, Kallakuruchi, Tamil Nadu - 606 202.

6.The Headmaster,
Panchayat Union Elementary School,
Mohur, Kallakurichi,
Tamil Nadu - 606 202.

+1cc to Mr.C.Johnson, Advocate, S.R.No.53275

+1cc to the Government Pleader, S.R.No.53523

W.P.No.21803 of 2021
and

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AD(CO)
CB(10/11/2021)