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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22247 of 2021

and

W.M.P.Nos.23458 & 23459 of 2021

(Through Video Conferencing)

S.Amaravathi

... Petitioner

Vs.

1.The Commissioner,
School Education Department,
DPI Campus, Chennai - 600 006.

2.The District Educational Officer,
Krishnagiri.

3.The Block Educational Officer,
Krishnagiri.

4.The Headmaster,
Government High School,
Pethanappali,
Krishnagiri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records of the fourth respondent in Proceedings No.228/2021 dated 01.10.2021, quash the same and consequently direct the respondents to continue to pay the incentive increment for having obtained masters Degree qualification.

For Petitioner : Ms.Dakshayani Reddy
For Respondents :
For R1 to R3 : 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 third respondents.



2. This writ petition is being disposed at the time of admission considering the fact that the impugned order dated 01.10.2021 has been passed in violation of Principles of Natural Justice.

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3. The impugned order seeks to recovery of incentive increments granted to the petitioner with effect from 16.12.2000 in terms of G.O.Ms.No.307, School Education (E2) Department dated 15.12.2000 pursuant to the rescinding of G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013.

4. The petitioner has completed her post-graduate in the year 1994 and B.Ed in the year 1996. The petitioner was granted the benefit of incentive increments in terms of G.O.Ms.No.307, School Education (E2) Department dated 15.12.2000. The Government decided to withdraw the aforesaid Government Orders.

5. Appearing on behalf of the petitioner, the learned counsel for the petitioner submits that the petitioner was initially appointed as a Secondary Grade Teacher through the Employment Exchange Board on 07.10.1996 and thereafter promoted as a B.T Assistant with effect from 05.11.2007. The learned counsel for the petitioner further submits that the issue is no longer res integra and is covered by the decision of the Hon'ble Supreme Court in State of Punjab and others Vs Rafiq masih (White Washer) and others, 2015 (4) SCC 334.

6. Appearing on behalf of the first to third respondents, the learned Government Advocate submits that the respondents are justified in initiating recovery proceedings inasmuch as the impact of the incentive increments granted were continued even after the issuance of G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013. The learned Government Advocate further refers to the decision of the Hon'ble Supreme Court in High Court of Punjab and Haryana Vs Jagdev Singh, (2016) 14 SCC 267. He submits that the impugned order is sustainable inasmuch as the impact of the incentive increments has been continued to be given to the petitioner despite the issuance of G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents.

8. The impugned order is unsustainable as it has been passed without violation of Principles of Natural Justice and has not preceded with a show cause proceedings. It is clear that G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013 cannot have a retrospective operation.



9. Therefore, the impugned order is liable to be quashed and is hereby quashed and the case is remitted back to the respondents to pass appropriate orders after issuing a proper Show Cause Notice to the petitioner within a period of sixty days from the date of receipt of a copy of this order. While issuing Show Cause Notice to the petitioner, the respondents shall ensure demand in the proposed Show Cause Notice is not made by giving retrospective effect to G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013 has been issued/passed only in the year 2013.

10. It is made clear that the Show Cause Notice should clearly spell out the reasons as to why the incentive increments were granted to the petitioner and the impact there of is to be reversed and why the amount paid to the petitioner after 10.07.2013 should not be recovered from the petitioner.

11. The petitioner shall be given adequate opportunity to give a proper reply/representation to the Show Cause Notice to be issued by the concerned respondent. The respondents shall thereafter pass appropriate orders on merits in accordance with law after duly considering the representation of the petitioner within a period of six months from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
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Chennai - 600 006.

2.The District Educational Officer,
Krishnagiri.



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SSV (CO)
K.RK. (22.11.2021)