



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No. 7714 of 2013

S. Kulanthai Theres

:Petitioner

.vs.

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Thoothukudi District, Thoothukudi.

3.The Assistant Elementary Educational Officer,
Ottaipidaram - 628 401,Thoothukudi District.

4.The Correspondent,
CMML Middle School,
Naraikkinar,
Thoothukudi District.

: Respondents

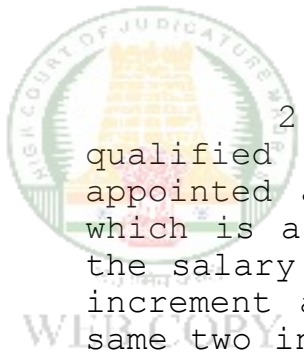
PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Na.Ka.No.641/A2/07, dated 04.12.2007 passed by the 3rd respondent and quash the same and consequently, direct the respondents to refund the sum of Rs.33,948/- recovered from the petitioner and disburse the same within a time limit to be fixed by this Court.

For Petitioner : Mr. A. Thirumurthy

For respondents : Mrs.D. Farjana Ghoushia
1 to 3 Special Government Pleader

O R D E R

The Writ petition has been filed to quash the recovery order passed by the 3rd respondent, dated 04.12.2007 and consequently, direct the respondents to refund the sum of Rs.33,948/- recovered from the petitioner and disburse the same within a time limit to be fixed by this Court.



2. The facts of the case are that the petitioner was qualified with B.Sc., B.Ed., and M.Sc., M.Ed., Degree and was appointed as Secondary Grade Teacher in the 4th respondent school, which is a private aided school. The petitioner agreed to receive the salary of the Secondary Grade post and she was given periodical increment also. The petitioner passed M.Sc., Degree and for the same two incentive increments were sanctioned. The petitioner relies on G.O.Ms.No.42, Education Department, dated 10.01.1989, wherein it is stated that the Secondary Grade Teacher, who acquired the higher qualification eligible for two advance increments. The petitioner states that she already possessed B.Ed., qualification from the initial date of appointment and therefore, she is eligible for advance increments for B.Ed., degree from 12.11.1990. But, the two advance increment was granted only for M.Sc., qualification from 01.09.1992. But vide the impugned order, that was cancelled and directed the 4th respondent school to rectify the audit objection raised in respect of payment of excess salary and recover and remit to the Sub Treasury. The 4th respondent implemented the order and worked out the excess salary of Rs.33,948/- and directed the petitioner to remit the amount to the Sub Treasury and the petitioner has also remitted the amount. After remitting, the petitioner has approached the respondents to refund the amount. The petitioner relies on some other persons had filed W.P(MD).No.1613 of 2008 and this Court vide order, dated 19.03.2010 has allowed the Writ Petition.

3. The respondents have filed a detailed counter and stated the petitioner was appointed with the graduate qualification of B.Sc., B.T., on consolidated pay of Rs.800/-per month, thereafter, vide G.O.Ms.No.20 Education Department, dated 08.01.1993, she was regularly appointed from 1992 in Secondary Grade vacancy in Time Scale of Pay. The appointment was approved after an undertaking given by the petitioner that she will not claim any higher scale of pay for the higher qualifications of B.Sc., B.T., M.A., M.Sc., and she will not claim any award of incentive increments specified in the G.O.Ms.No.42, Education Department, dated 10.01.1989. The respondents have stated the petitioner appointed in Secondary Grade Teacher post with the Higher qualification and then G.O.Ms. No. 155, Education Department, dated 03.10.2002 is applicable and the petitioner ought to have undergone one month child Psychology training. If any mistakes which found in the payment of salary, the respondents have duty and power to recover the same and vide ROC.No.641 / A3/ 2007, dated 04.12.2007 was issued to rectify the mistake. The petitioner has relied on the Judgment rendered in W.P (MD).No.1613 of 2008 and the facts are different and the same is not applicable. Since the audit objection was not dropped, the claim of the petitioner cannot be entertained.

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



5. In the counter it has been stated that the petitioner ought to have undergone Child Psychology training as per G.O.Ms.No.155 Education Department, dated 03.10.2002. On verifying the facts this Court holds G.O.Ms.No.155 is not applicable to the present case. In the said G.O it has been stated that the appointments from 11.07.1995 to 19.05.1998 are covered under the G.O. Since the petitioner was appointed in the year 1992, G.O.Ms.No.155 is not applicable.

6. The Government banned the appointment of B.T., Assistant in the Secondary Grade post vide G.O.Ms.No.559, dated 11.07.1995, which means prior to that it was not banned. Therefore, the plea of Child Psychology training was not undergone by the petitioner is rejected. Now, the claim of the incentive increments ought to be analyzed based on the date of completion of degree course and the date of appointment.

7. It is seen from the records that the petitioner has completed B.Sc., on 22.10.1986; M.Sc., on 02.12.1988 and B.Ed., on 18.02.1991. In the meanwhile, the petitioner was appointed on 01.09.1992 in the regular Secondary Grade post with with time scale of pay. Thereafter, the petitioner had completed the degree on 10.03.1993. Therefore, this Court holds that since the petitioner has completed M.Ed., degree after joining the service, she is entitled to G.O.Ms.42. As stated earlier G.O.No.155 is not applicable since the petitioner joined the service on 01.09.1992. The G.O.Mos.155 is applicable only to the persons who have joined the service from 11.07.1995 to 19.05.1998.

8. For the above stated reasons, the impugned audit objection is wrong and accordingly, the Writ Petition is allowed. The respondents are directed to refund the amount of Rs.33,948/- within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (T&P)

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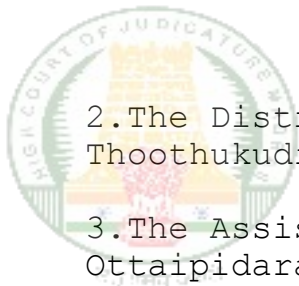
/ /2021

Sub Assistant Registrar(CS)

trp

To

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.



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Thoothukudi District, Thoothukudi.

3.The Assistant Elementary Educational Officer,
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