



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.1343 of 2021

and

C.M.P. [MD]No.5579 of 2021

The District Educational Officer,
Devakottai,
Sivagangai District.

...Appellant/2nd Respondent

Vs.

1.Dr.L.Rajendran

...1st Respondent/Writ Petitioner

2.The Principal Accountant General
Office of the Accountant General,
261, Anna Salai, Chennai-600 018.

3.The Secretary,
S.M.S.V. Higher Secondary School,
Karaikudi, Sivagangai District.

... 2nd & 3rd Respondents /1& 3 Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 03.09.2019 passed in W.P.(MD). No.14302 of 2012 and dismiss the writ petition.

Prayer in WP(MD). 14302/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 3rd respondent herein in proceedings No. nil dated 21.02.2008, Quash the same and further direct the respondents herein to refund the sum of Rs.1,11,824/- with interest to the petitioner herein within a reasonable time as may be specified by this Hon ble Court.

For Appellant	: Mr.R.Baskaran Standing Counsel for Government
For Respondent No.1	: Mr.E.V.N.Siva
For Respondent No.2	: Mr.R.Gunasekaran

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

With the consent on either side, this Writ Appeal is taken up

for disposal

<https://hcservices.ecourts.gov.in/hcservices/>



2.Heard Mr.R.Baskaran, learned Standing Counsel for the Government appearing for the appellant, Mr.E.V.N.Siva, learned Counsel appearing for the first respondent and Mr.R.Gunasekaran, learned Counsel appearing for the second respondent.

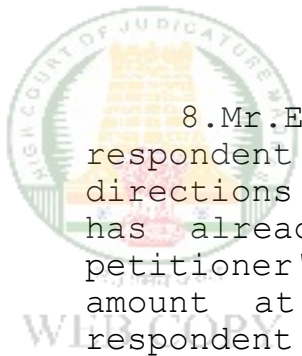
3.This appeal by the District Educational Officer is directed against the order dated 03.09.2019 in W.P.(MD).No.14302 of 2012.

4.The District Educational Officer, Devakottai, who was the second respondent in the writ petition is the appellant before us. The first respondent / writ petitioner prayed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the third respondent management dated 21.02.2008 and for a consequential direction to refund a sum of Rs.1,11,824/- with interest. The said amount was alleged to be excess payment made to the first respondent / writ petitioner, by way of an increment for possessing higher educational qualification.

5.It is not in dispute that at the time when the first respondent was appointed, the position which prevailed was that incentive increment was eligible to be paid even to persons who enter service with higher qualification. The Government took a policy decision in the year 1995 and issued G.O.Ms.No.860, Education, Science & Technology Department dated 08.11.1995, withdrawing the scheme of incentive increment. This resulted in recovery of the excess amount paid which was at the rate of Rs.120/- Per month. When the respondent / writ petitioner resigned from service, the said amount was deducted from his retirement benefits. Therefore, he filed a writ petition.

6.The learned Single Bench took note of the Government orders which were prevalent on the date of appointment namely, G.O.Ms.No.745 (Education Department) dated 04.06.1990 and held that it gives an indication that advance increment for teachers having higher qualification at the time of appointment is payable. Further, the learned Single Bench took note of the decision of the Division Bench which confirmed the position that every teacher is entitled to get incentive increment for having higher qualification at the time of appointment.

7.In our considered view, such a broad proposition need not be laid down in the present proceedings because, we are only concerned as to whether the incentive increment was rightly paid to the first respondent / writ petitioner or not. Therefore, the said finding rendered by the learned Single Bench on a general proposition stands vacated and the legal issue is left open. However, we are satisfied that the learned Single Bench rightly granted the relief sought for by the petitioner and the appellant has not made out any ground to interfere with the order passed by the learned Single Bench.



8.Mr.E.V.N.Siva, learned Counsel appearing for the first respondent / writ petitioner submitted that pursuant to the directions issued in the impugned order, the amount of Rs.1,11,824/- has already been re-credited to the first respondent / writ petitioner's account but the interest has not been paid. Since, the amount at the rate of Rs.120/- per month was paid to the respondent / writ petitioner by the department by taking note of the various Government Orders which were prevalent at the relevant point of time and in the absence of any material to show that the respondent/ writ petitioner has mislead the department and obtained the benefit of incentive increment, we are of the view that the amount which was recovered and subsequently repaid after the order passed in the writ petition should carry interest. However, we are of the view that the reasonable rate of interest shall be 4% instead of 8% as ordered by the Hon'ble Single Bench.

9.In the result, the Writ Appeal is allowed in part, confirming the finding of the learned Writ Court that the respondent / writ petitioner is entitled to refund of Rs.1,11,824/- which has already been refunded. However, the rate of interest is reduced to 4% from 22.02.2008, till the date on which the amount was refunded to the respondent / writ petitioner. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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.

To

The District Educational Officer,
Devakottai,
Sivagangai District.

The Principal Accountant General
261, Anna Salai, Chennai - 600018.

W.A. [MD]No.1343 of 2021

08.07.2021

RK (16.07.2021) 3P 3C