



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD)No.7658 of 2021

and

W.M.P. (MD) Nos.5822, 5823 and 5824 of 2021

D.Hilda Ponmani

... Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
DPI Buildings, College Road,
Chennai - 600 006.

3.The Chief Education Officer,
Collector Office, Kokkirakulam,
Tirunelveli - 627 009.

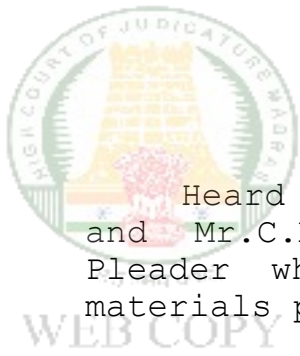
4.The Head Master,
Govt. (Girls) Higher Secondary School,
Nanguneri, Tirunelveli - 627 002.

5.The Head Master,
K.R. Govt. Higher Secondary School,
Reddiarpatti, Palayamkottai Taluk,
Tirunelveli District - 627 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed in Na.Ka.No.35/2020, dated 27.07.2020 and Na.Ka.No.35/2020, dated 12.08.2020 passed by the fourth respondent herein and quash the same as being illegal, arbitrary, unconstitutional and consequently direct fifth respondent to disburse the petitioner's salary along with incentive increment for completion of higher qualification without any recovery for the post of Physical Education Teacher.

For Petitioner	:	Mr.T.Sundaravadanam
For Respondents	:	Mr.C.M.Mari Chelliah Prabhu Additional Government Pleader

**ORDER**

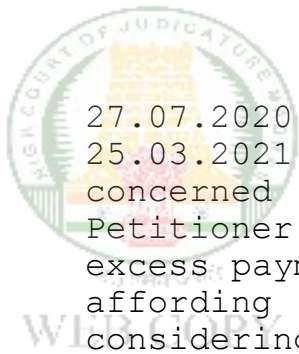
Heard Mr.T.Sundaravadanam, Learned Counsel for the Petitioner and Mr.C.M.Marichellaiah Prabhu, Learned Additional Government Pleader who takes notice for the Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. The Writ Petition challenges the proceedings in Na.Ka.No.35/2020, dated 27.07.2020 and Na.Ka.No.35/2020, dated 12.08.2020 passed by the Fourth Respondent in which the Petitioner has been called upon to refund the sum of Rs.63,440/- excessively paid to her towards incentive increment for higher qualification without possessing the same. It is further brought to notice that after filing of the Writ Petition, the Petitioner has been served with another Order in Na.Ka.No.38/20 dated 25.03.2021 claiming that the aggregate sum of Rs.1,43,542/- is recoverable from the Petitioner towards such excess payment.

3. It is the contention of the Learned Counsel for the Petitioner that the Petitioner is entitled to the incentive increment for higher qualification which she possesses and as such, the excess payment claimed to have been made to her is erroneous.

4. It is trite law that any administrative action which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken. It is not the case of the Respondents that before the impugned recovery towards excess payment claimed to have been made was effected, any show cause notice had been issued to the Petitioner calling for an explanation from her with supporting materials relied in that regard. Such incurable flaw in decision making by the Respondents which is in violation of the principles of natural justice vitiates the impugned orders which have to be set aside on that sole ground leaving it open to the concerned authorities to appropriately deal with the matter following due process. The Government of Tamil Nadu in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, after referring to the principles laid down by the Hon'ble Supreme Court of India in **State of Punjab -vs- Rafiq Masih (Whitewasher)** [(2015) 4 SCC 334], has issued detailed instructions providing the manner in which excess amount made to Government Servants/Pensioners/Family Pensioners have to be made. In response to the query made by this Court, the Learned Additional Government Pleader appearing for the Respondents, on instructions, states that no such show cause notice had been issued to the Petitioner before passing the impugned Orders as well as the subsequent order dated 25.03.2021.

5. In that view of the matter, the impugned Orders dated



27.07.2020 and 12.08.2020 as well as the subsequent order dated 25.03.2021 passed by the Fourth Respondent are set aside. The concerned authorities shall issue show cause notice to the Petitioner along with working-sheet of the calculation for the excess payment claimed to have been made to her in her pay and after affording full opportunity of personal hearing to her and considering each of the objections that may be raised by her, a reasoned order shall be passed on merits and in accordance with law following the procedure laid down in the instructions in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 issued by the Government of Tamil Nadu, uninhibited and uninfluenced by any of the earlier orders passed in the matter, and the decision taken shall be communicated to the Petitioner under written acknowledgement.

6. In the result, the Writ Petition is ordered in the aforesaid terms. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

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

- 1.The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
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Chennai - 600 006.
- 3.The Chief Education Officer,
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Tirunelveli District - 627 007.

+1 CC to M/s.SPL GP (SR-15600[F] dated 09/04/2021)

+1 CC to M/s.T.SUNDARAVADANAM, Advocate (SR-15711[F] dated
09/04/2021)

W.P. (MD) No.7658 of 2021
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