



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 3747 of 2014

and

M.P. (MD) Nos. 2 to 4 of 2014

M.Jeyarani

... Petitioner

Vs.

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

2.The Director of School Education,
Office of Director of School Education,
Chennai - 600 006.

3.The Chief Educational Officer,
Sivagangai,
Sivagangai District.

4.The Regional Accounts Officer (Audit),
School Education Department,
Madurai - 625 002.

5.The Headmaster,
Government Higher Secondary School,
S.S.Kottai,
Sivagangai District.

... 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 proceedings of the impugned order in Lr.No. 129, School Education [paka5(2) 2013 dated 17.07.2013 on the file of the First Respondent and consequential impugned order in Na.Ka.No.2963/A11/2013 dated 24.09.2013 on the file of the Fourth Respondent and quash the same and consequently direct the Respondents to fix the pay and increment for acquiring M.Phil qualification from the date of joining as per the principles and objects in the grant of incentive increment for acquiring higher qualification on par other teachers within the reasonable time as may be fixed by this Court.



For Petitioner : Mr. V.Kannan
For Respondents : Mr. B.Saravanan
Government Advocate

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O R D E R
(through Video Conference)

Heard Mr. V.Kannan, Learned Counsel for the Petitioner and Mr. B.Saravanan, Learned Government Advocate for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in Lr. No. 129 School Education [Paka5(2)] 2013 dated 17.07.2013 passed by the First Respondent and consequential order in Na. Ka. No. 2963/A11/2013 dated 24.09.2013 passed by the Fourth Respondent in which the Petitioner has been called upon to refund the sum of Rs. 73,125/- excessively paid to him, mainly on the ground that no show cause notice had been issued calling for any explanation from the Petitioner in that regard. In response to the query made by this Court, the Learned Counsel representing the Respondents, on instructions, states that no such show cause notice had been issued to the Petitioner before passing the impugned orders.

3. 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. 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 any excess amount paid to Government Servants/Pensioners/Family Pensioners have to be handled.

4. As already stated, 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 him with supporting materials relied in that regard. Such incurable flaw in the decision making process by the Respondents which is in violation of the principles of natural justice vitiates the impugned order and has to be set aside on that sole ground leaving it open to the concerned authorities to appropriately deal with the matter following due process. In that view of the matter, the impugned orders dated 17.07.2013 and 24.09.2013 passed by the First and Fourth Respondents



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 him in his pay and after affording full opportunity of personal hearing to him and considering each of the objections that may be raised by him, 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 acknowledgment.

In the result, the Writ Petition is ordered in the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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,
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Chennai - 600 009.
- 2.The Director of School Education,
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+1 cc to Spl.GP, SR.No.24908

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Dated: 30.07.2021

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