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W.P.(MD).No.9563 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.9563 of 2014

and

M.P (MD) Nos.1 to 3 of 2014

and

W.M.P. (MD) .No.15758 of 2020

S. Vanitha

... Petitioner

Vs.

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

2.The Director of School Education,
Office of Director Of School Education,
Chennai - 600006.

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

4.The Head Master,
Panchayat Union Middle School,
Sundararajapuram.
Andipatti Union,
Theni District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter of the first respondent in Lr.No.129 School Education (Paka5(2)2013-1, dated 17.07.2013 and the consequent impugned order of 3rd respondent in Na.Ka.No.4797/A3/2013 dated 16.07.2013 and quash the same as illegal and consequently direct the respondents herein to fix the pay and increment of the petitioner for acquiring M.Phil., qualification from the date of her joining as B.T.Assistant as on 23.03.2007.

For Petitioner	:	M/S. M. Gnanagurunathan
For Respondents	:	Mr. M.Linga Durai Government Advocate

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus to quash the impugned order of the first

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respondent, dated 17.07.2013 and the consequent order of the third respondent, dated 16.07.2013 and to direct the respondent to fix the pay and increment of the petitioner for acquiring M.Phil., qualification from the date of her joining as B.T Assistant as on 23.03.2007.

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2.The petitioner was appointed as B.T Assistant (Mathematics) on 23.03.2007 and her service was regularized from the date of her appointment. It is not in dispute that the petitioner has completed M.Sc., and M.Phil., even before her appointment. It is stated that the petitioner is entitled to incentive increment for having higher qualification even at the time of appointment. It is also admitted that the petitioner was also given incentive increment for possessing higher qualification, when she was appointed. However, by the impugned order dated 17.07.2013, a direction was issued by the first respondent to the Head Masters of all the Schools in the District to recover the amount, which was paid to the teachers by way of incentive increment for acquiring higher qualification. By the impugned order dated 17.07.2013, the entitlement of graduate teachers to get incentive increment for acquiring higher qualification from the date of G.O, is recognized. However, it is stated that the teachers are not entitled to such incentive increment before the issuance of G.O. Hence, it is contended that the order impugned in the writ petition is liable to be quashed in view of the judgment of this Court in several cases holding that the incentive increment should be given not only to those persons, who acquired qualifications subsequently, but also to persons, who were appointed with higher qualification.

3.The learned counsel appearing for the petitioner relied upon the judgment of the Division Bench of this Court in the case of ***R.Premkumari -vs- State of Tamil Nadu and others***, reported in ***(2008) 5 MLJ 1349***, wherein the appellant therein was working as Post Graduate Assistant in a Government aided School with effect from 04.11.1996. At the time of appointment, the appellant had obtained M.A(English)., B.Ed., M.Phil., and M.Ed. The appellant was granted incentive increment for having obtained M.Ed., qualification and another incentive increment for having obtained M.Phil., qualification. On the basis of the letter issued by the Director of School Education, dated 18.10.2000 indicating that the teachers, who are appointed between 01.01.1996 and 13.04.1998 were not eligible to incentive increments, a recovery order was issued that was challenged by the appellant in a writ petition, which was dismissed by the learned single Judge. The appellant preferred an appeal. However, the appeal was allowed by the Division Bench of this Court. The relevant portion of the judgment of the Division Bench is extracted hereunder:

"8. We do not think the aforesaid observation of the learned single Judge can stand the scrutiny of logic or even reality. The obvious intention in granting an



incentive increment is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification, even though in service, so that the quality of service would improve. This is obviously on the assumption that a higher qualified person could work more efficiently. Therefore, it defies logic as to why a person who had already qualified would not get an incentive increment, if such an incentive increment is given to a lower qualified person in service, who acquires subsequently such higher qualification. Such a differential treatment would not stand the scrutiny of right to equality as enshrined in Articles 14 and 16 of the Constitution.

9. That apart, if the relevant G.Os are examined carefully, it can be safely concluded that the G.Os in reality do not intend to lay down in the manner it has been now concluded by the learned single Judge. We have already extracted the relevant portions of the G.Os. The underlined portion of G.O.Ms.No.42 dated 10.1.1969 indicates that if a person possessing higher qualification enters into service, his initial pay may be fixed by giving advance increments. Similarly in the subsequent G.O.Ms.No.747, dated 18.8.1986, paragraph 2 makes it clear that "the P.G. teachers and Headmasters of Higher Secondary Schools who possess or acquire Post Graduate qualification in education i.e. M.Ed., Degree shall be granted two advance increments in the scales of pay admissible to them". It is nowhere contemplated in the G.Os., that the incentive increments would be given only to those who acquired subsequently the qualification, but it would be given to all those who either possess, which means the degree is obtained at the time of entering into service or acquire, which means the degree is obtained after entering into service. Even the subsequent G.Os or the clarifications, nowhere indicate that in order to be eligible for getting incentive increment, the person has to acquire such higher qualification only after entering into service and not otherwise. Therefore, we are unable to accept the conclusion of the learned single Judge that a person who enters into service after having acquired a higher qualification, is not entitled to get incentive increments.

10. Since the impugned order was passed on the basis that the appellant was not entitled to receive incentive increments having entered into service with higher qualification is now disapproved by us, the authorities are required to consider the matter afresh in the light of the conclusion already made to the effect



that the appellant was entitled to receive such increments at the time of entry into service.

11. The question as to whether the appellant would continue to receive such increments in the revised scale of pay would be required to be reconsidered by keeping in view the various relevant factors including G.O.Ms.No.747 dated 18.8.1986, G.O.Ms.No.1170 dated 20.12.1993 as rectified in G.O.194 dated 10.10.2006 and the clarification dated 2.11.2007, and G.O.Ms.No.162, Finance, dated 13.04.1998 and the provisions made in the Tamil Nadu Revised Scales of Pay Rules, 1998.

12. So far as the direction regarding recovery is concerned, learned counsel had placed reliance on the decision of the Supreme Court reported in (2001) 2 SCC 186 = (2001) 1 Supreme 169 (E.S.P. Rajaram and others v. Union of India and others) However, such contention of the appellant had been given a short-shrift by the learned single Judge.

12.1 In (1993) 3 SCC 444 (SECRETARY, FINANCE AND PLANNING DEPARTMENT AND OTHERS v. SALADA S. RAO AND ANOTHER), it was observed:-

"24. ... Therefore, in each case of the respondent-Stenotypists, the fact has to be verified. Subject to the above, they would be entitled to the benefit of GO.Ms.No.182 dated 17-7-1987. However, if any of the Stenotypists are held not entitled to increment on passing LL B because he had got one increment upon graduation, no recovery of increments already drawn will be made. ..." (Emphasis added) **12.2** In (1994) 2 SCC 521 (SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS), it was observed :-

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the



petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

12.3 In 1995 Supp(1) SCC 18 (SAHIB RAM v. STATE OF HARYANA AND OTHERS), it was observed by the Supreme Court

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"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.. . ." (Emphasis added) **12.4** In 1995 Supp (3) SCC 722 (NAND KISHORE SHARMA AND OTHERS v. STATE OF BIHAR AND OTHERS), while considering the question of recovery of amount paid by mistake, it was observed :-

"2. . . . But at the same time, we are of the view that the appellants cannot be blamed. The Anomaly Committee recommended grant of higher pay scales to them. The Finance Department also concurred with the same and as a result thereafter the appellants were given the pay scales and were disbursed the arrears as a lump sum. Having paid the arrears to the appellants, the State Government could not have reversed the same specially without complying with the rules of natural justice. . . ."

(Emphasis added) **12.5** In (2001) 2 SCC 186 = (2001) 1 Supreme 169 (E.S.P. RAJARAM AND OTHERS v. UNION OF INDIA AND OTHERS), while negating the claim regarding entitlement of higher emoluments, the Supreme Court observed:-
"23. ...However, in our considered view, it will be just and fair to clarify that any amount drawn by such employees either in the basic post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of this



judgment. This position also follows as a necessary corollary from the observations made by this Court in para 18 of the judgment in *M. Bhaskar case*."

12.6 Similar view is expressed by the Supreme Court in (2007) 6 SCC 180 -*Babulal Jain vs. State of M.P.* and by the Madras High Court in (2006) 1 MLJ 143 -*Palavesamuthu, D. v. Tamil Nadu Administrative Tribunal*.

13. On a perusal of these decisions, it is apparent that where excess payment is made not on account of any erroneous representation of the employee, but on the basis of error committed by the authorities, the Supreme Court has invariably directed that recovery need not be made.

14. In the present case, there is nothing to indicate that the present appellant had made any misrepresentation in the matter. Since the amount had already been paid and obviously spent by the appellant thinking that she was entitled to such amount, it would cause undue hardship if at a distant point of time such amount is recovered.

15. In the result, the appeal is allowed, subject to the following directions :-

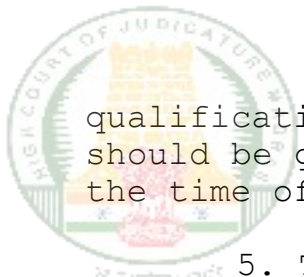
(i) The appellant was entitled to claim incentive increments for having entered into service with higher qualification.

(ii) The question as to whether the appellant was entitled to receive the benefit of such increment even after introduction of revised scale of pay, is required to be reconsidered in the light of the relevant rules and the Government Orders.

(iii) Even assuming that any amount had been paid in excess, such amount shall not be recovered from the appellant.

Consequently, the connected miscellaneous petition is closed. No costs.

4. Since the Division Bench has held that the appellant therein is entitled to get incentive increment for having entered into service with higher qualification, the petitioner in the present writ petition is also entitled to succeed. The Honourable Division Bench, after considering the object behind the grant of incentive increment to the teachers for acquiring higher qualification, has specifically held that if the incentive increment was granted to a lower qualified persons for acquiring higher



qualification after entering into service, such incentive increment should be granted to a person, who possessed higher qualification at the time of appointment.

5. The petitioner, who had M.Sc., and M.Phil., at the time of entry into service, is also entitled to incentive increment. Hence, this writ petition is allowed as prayed for. The impugned order of the first respondent Lr.No.129 School Education (Paka5(2)2013-1, dated 17.07.2013 and consequent impugned order of the third respondent in Na.Ka.No.4797/A3/2013 dated 16.07.2013, are quashed. The respondents are directed to fix the pay and increment of the petitioner, taking into account the higher qualification acquired by the petitioner from the date of her joining as B.T Assistant ie., on 23.03.2007. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

Sn/Ns

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 the Government,
School Education Department,
Government of Tamil Nadu,
Fort.St.George, Chennai.
- 2.The Director of School Education,
Office of Director Of School Education,
Chennai - 600006.
- 3.The Chief Educational Officer,
Theni, Theni District.

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-28299[F] dated 06/09/2021)

+1 CC to M/s.GP (SR-28341[F] dated 07/09/2021)

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03.09.2021

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