



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.18101 of 2010

S.Mani

... Petitioner

Versus

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
D.P.I Campus, College Road,
Chennai - 600 006.
3. The District Educational Officer,
Jaigopal Karodiya Govt. School Campus,
Chennai East, Chennai - 600 094.
4. The Secretary,
RBANC Higher Secondary School,
No.26, Swami Chetty Street,
Komaleeswaranpet,
Chennai - 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records call for the entire records pertaining to the impugned order, dated 22.07.2009 passed by third respondent under Ref. Na.Ka.No.2878/A1/09 and quash the same and to consequently, direct the respondents herein to restore the petitioner's pay scale after taking into account the advance incentive increment that was granted to the petitioner while at the time of joining service and to direct the respondents herein to refund the sums deducted from the salary of the petitioner towards recovery of the advance incentive increment paid.



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For Petitioner : M/s.R.Uma Sudhan

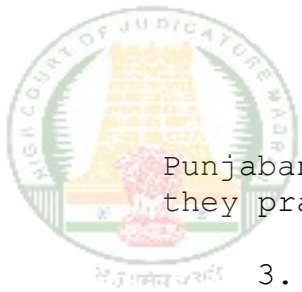
For Respondents : Mr.M.Alagu Gowtham,
Government Advocate,
for RR-1 to 3

: Mr.P.Ganesan for R4

ORDER

At the time of filing of this Writ Petition, the petitioner was working as Physical Education Teacher in the fourth respondent school. The petitioner possesses degree of Zoology and degree in Physical Education. At the time of his appointment in the year 1989, Diploma (C.P.Ed) in Physical Education is the essential qualification, but, however, since the petitioner possesses the qualification of degree itself, he was appointed and his appointment was approved. Apart from the same, he was granted one advance increment for possessing higher qualification. This was claimed and granted by mistake as if the petitioner possesses the degree qualification over and above the required qualification and Diploma/Certificate course, which was not the case. This was, however, realised only in the year 2009 and therefore, by the impugned order, dated 22.07.2009, the said advance increment, which was granted, was ordered to be withdrawn and the excess amount paid, from 04.01.1989 till the date of the impugned order i.e., a sum of Rs.44,456/-, was ordered to be recovered. As a matter of fact, pursuant to the impugned order, a sum of Rs.24,000/- was already stood recovered/withheld by the respondents. Aggrieved by the same, the petitioner has filed by the present Writ Petition.

2. The respondents have resisted the Writ Petition by filing a counter affidavit as well as an additional counter affidavit. It is the categorical case of the respondents that if only the petitioner is in possession of the degree qualification over and above the requisite qualification, he is entitled to advance increment. In this case, being a degree holder as the alternative of certificate course, the essential qualification, the petitioner was appointed and therefore, he was not entitled for advance increment for possession of a higher qualification. They would further submit that the petitioner's case does not come within the five exceptions laid down by the Hon'ble Supreme Court of India in the White Washer's case i.e., State of



Punjaband Others Vs. Rafiq Masih (Whitewasher)¹ and therefore, they prayed for dismissal of the Writ Petition.

3. Today, when the matter was taken up for hearing, the learned Counsel for the petitioner was not present. Heard Mr.M.Alagu Gowtham, learned Government Advocate for respondents 1 to 3 and Mr.P.Ganesan, learned Counsel for fourth respondent.

4. In this case, I agree with the contention of the learned Government Advocate that since the petitioner did not possess the qualification of the diploma i.e., C.P.Ed and his qualification of Bachelors Degree in Physical Education is not over and above the required essential qualification, he is not entitled to the advance increment and accordingly, the impugned order, to the extent it withdrew the said advance increment and refixed the pay of the petitioner, is valid and correct. But, however, as far as the recovery is concerned, the contention of the respondents that it will not come under any of the five exceptions enunciated by the Hon'ble Supreme Court of India in the case of Whitewasher (stated supra) is incorrect. The Exception No.3 stated by the Hon'ble Supreme Court of India reads as follows:-

"(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued."

5. In this case, admittedly, the order of recovery was passed in the year 2009 and the payment was started to be made from 04.01.1989. Therefore, it will come within the said exception laid down by the Hon'ble Supreme Court of India. Therefore, I hold that the order of recovery of excess payment of the sum of Rs.44,456/- alone is incorrect in law. Admittedly, by inadvertence, the advance increment was granted in the year 1989 and the mistake was realised only in the year 2009 and therefore, just prior to the superannuation, recovery of the said sum is unreasonable and unjustifiable.

6. Considering the fact that the petitioner has now superannuated from the service, the Writ Petition is allowed on the following terms:-

(i) The impugned order, dated 22.07.2009 passed by the third respondent and the consequential order, dated 24.03.2010 passed by the fourth respondent are set aside inasmuch as they order recovery of Rs.44,465/-;



(ii) The petitioner will be entitled for refund of Rs.24,000/- which is already recovered/withheld by the respondents however without any interest;

(iii) The respondents shall refund the said amount within two months from the date of receipt of copy of this order. No costs. Consequently, M.P.No.2 of 2010 is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

grs

To

1. The Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
D.P.I Campus, College Road,
Chennai - 600 006.
3. The District Educational Officer,
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W.P.No.18101 of 2010

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srg 02/05/2022