



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.16501 OF 2020

AND

W.M.P.NO.20477 OF 2020

P.Gandhimathi

... Petitioner

.Vs.

1. The Chief Educational Officer,
Salem.
2. The District Educational Officer,
Salem.
3. The Principal Accountant General (A and E),
Tamilnadu, Chennai.
4. The District Treasury Officer,
Salem.

... Respondents

PRAYER:-

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in Na.Ka.No.0029/A3/2020 dated ..01.2020 signed on 09.01.2020 issued by the Second Respondent herein quash the same and to direct the Respondent herein to forthwith sanction and disburse the Earned Leave and Half Pay -Unearned Leave on Personal Affairs Special Provident Fund Monthly pension arrears and regular monthly pension, commutation of pension amount to the petitioner along with interest on the delayed payment.

For Petitioner : Mr.S.Balakrishnan
For Mr.M.Ravi

For Respondents : Mrs.P.Rajarajeswari
Government Advocate



O R D E R

The writ petitioner was initially appointed to the post of Post Graduate Assistant in Government Girls Higher Secondary School, Salem on 06.09.1989 and thereafter, promoted as Head Mistress of Higher Secondary School on 08.08.2016. Based on the qualifications M.Phil/Ph.D degree acquired by the petitioner on 25.8.2018, incentive increment was awarded to the petitioner. She was unconditionally permitted to retire from service as Head Mistress on attaining superannuation on 30.09.2019. Now, the second respondent based on the audit objection, passed recovery order dated .01.2020 to recover the incentive increments awarded to the petitioner for acquiring Post Graduation Degree of M.Phil/Ph.D. Challenging the said order, the petitioner has preferred the present writ petition before this Court.

2. According to the learned counsel appearing for the petitioner, without providing opportunity of hearing, the second respondent passed the impugned order violating the principles of natural justice and therefore, the impugned order is liable to be set aside.

3. The learned Government Advocate appearing for the respondents would submit that based on the objection made by the Audit, the excess amount was directed to recover from the petitioner and therefore, the said order is perfectly valid in accordance with law.

4. Heard the rival submissions of the parties and perused the materials available on record.

5. The learned counsel appearing for the petitioner would submit that the impugned recovery order passed cancelling the incentive increment awarded to the petitioner in the year 2008. The respondent cannot pass such an order after the lapse of more than ten years. Further, without giving an opportunity of hearing, the impugned recovery order has been passed by the respondent and the same is liable to be set aside on the ground of violation of principles of natural justice. The petitioner also relied on the judgment of the Hon'ble Apex Court in State of Punjab & ors. vs. Rafiq Masih (white washer) reported in (2005) 4 SCC 334.

6. Considering the facts and circumstances of the case and the decision cited supra, the impugned order is set aside and the matter is remitted to the second respondent to consider afresh and pass appropriate orders on merit and in accordance with law, within a period of 12 weeks from the date of receipt of copy of the order, after providing an opportunity of hearing



to the petitioner and to place relevant materials before the authority concerned.

7. With the above directions, the writ petition stands allowed. No Costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Educational Officer,
Salem.
2. The District Educational Officer,
Salem.
3. The Principal Accountant General (A and E),
Tamilnadu, Chennai.
4. The District Treasury Officer,
Salem.

+1cc to Mr.M.Ravi, Advocate, S.R.No.18099
+1cc to the Government Pleader, S.R.No.18183

W.P.NO.16501 OF 2020 AND
W.M.P.NO.20477 OF 2020

MT (CO)
PBS/07/04/2022