



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27878 of 2017  
and  
W.M.P. No. 29895 of 2017

S.Jothi

...Petitioner

-vs-

1. The Director of Elementary Education,  
Chennai - 600006.
  2. The District Elementary Education Officer,  
Cuddalore, Cuddalore District.
  3. The Assistant Elementary Educational Officer,  
Kumaratchi Block, Cuddalore District.
- ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Na. Ka. No. 243/A2/2017 dated 17.08.2017 and quash the same insofar as the petitioner is concerned and direct the respondents to restore the incentive increments granted to the petitioner for acquiring M.A and B.Ed qualifications and grant her all consequential benefits.

For Petitioner : Mr. P.Mohanraj

For Respondents: Ms. P.Rajarajeswari  
Government Advocate (for R1 to R3)

O R D E R

Heard Mr. P.Mohanraj, Learned Counsel for the Petitioner and Ms. P.Rajarajeswari, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is working as Secondary Grade Teacher in Panchayat Union Primary School, Ruthirasolai, Cuddalore District, challenges the Proceedings in Na. Ka. No.



243/A2/2017 dated 17.08.2017 passed by the Third Respondent in which she has been advised to remit the sum of Rs. 2,17,260/- towards wrongful payment said to have been made to her towards incentive increments for higher qualification and to consequently direct the Respondents to restore the incentive increments granted to her for higher qualification.

3. This Court at the time of admission on 01.11.2017 had granted an order of interim stay of recovery alone, which continues to be in force as on date.

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. 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 would have to be made.

5. There is nothing to show that either in the impugned order or in the Counter-Affidavit filed by the Respondents that before the wrongful 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 is in violation of the principles of natural justice and would vitiate the impugned order. In that view of the matter, the impugned order passed by the Third Respondent is set aside leaving it open to the concerned authorities to appropriately deal with the matter following due process. It shall be incumbent upon the concerned authorities to issue show cause notice to the Petitioner along with working-sheet of the calculation for the wrongful payment claimed to have been made to her 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 the earlier order passed in the matter, and the decision taken shall be communicated to the Petitioner under written acknowledgement.



6. In the event of the concerned authorities failing to initiate fresh such proceedings within 31.07.2022, any amount so far recovered from the Petitioner pursuant to the impugned order, which has been set aside, shall be refunded to her under written acknowledgment and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Director of Elementary Education,  
Chennai - 600006.
2. The District Elementary Education Officer,  
Cuddalore, Cuddalore District.
3. The Assistant Elementary Educational Officer,  
Kumaratchi Block, Cuddalore District.

Copy to

The Registrar (Judicial),  
Madras High Court,  
Chennai - 600 104.

+1 CC to Mr.Rajendiran, Advocate sr 16613.

W.P. No. 27878 of 2017

MG(CO)  
SP(11/05/2022)