



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.8497 of 2019

and

W.M.P. (MD) No.6645 of 2019

WEB COPY

G.Aruna Tamil Malar

... Petitioner

vs.

1.The Director of School Education

(Higher Secondary)

E.V.K.Sampath Building

D.P.I.Campus, College Road

Nungambakkam, Chennai-6

2.The Divisional Accounts Officer (Audit)

School Education Department, Madurai-2

3.The Head Master

Corporation Girls Higher Secondary School

Kallanai, Tirunelveli Town, Tirunelveli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the impugned order of the third respondent in Na.Ka.No.45/A/19, dated 25.03.2019 and quash the same and consequentially direct the respondents to give all monetary and service benefits to the petitioner within the time fixed by this Court.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

O R D E R

The order dated 25.03.2019, passed by the third respondent, is sought to be quashed in this writ petition.

2. The petitioner was appointed as Physical Director Grade-I on consolidated pay and subsequently, her services were regularised in the post of Post Graduate Teacher in Physical Education. The



petitioner was sanctioned incentive increment for acquiring additional educational qualification as per the Government Orders.

3. The learned counsel for the petitioner made a submission that the impugned order of recovery and cancellation of increment was passed without issuing any show cause and no opportunity was given to the petitioner. This apart, the petitioner is fully eligible for incentive increment.

4. The learned Additional Government Pleader appearing for the respondents objected the said contention by stating that the petitioner was found not eligible for incentive increment as per the Government Order and therefore, the recovery order was issued in accordance with the policy of the Government. Any excess amount, if at all paid, is to be recovered from the employee concerned and the employee may not be allowed to have the excess amount, which will result in unjust enrichment.

5. This Court is of the considered opinion that any excess amount, if at all, paid to the employee, it is to be recovered. The tax payers' money should not be wasted. In the event of allowing an employee to possess such excess amount, it will certainly amount to unjust enrichment. However, while imposing recovery, the Authorities competent are bound to provide opportunity to the aggrieved employee enabling him / her to defend their case. Any order affecting the service conditions of the employee must be issued only after providing due opportunity to him / her.

6. In the present case, the respondents are unable to establish that show cause notice was issued to the petitioner before ordering recovery of excess amount. This being the factum, the case on hand is fit for remand.

7. At this juncture, it is represented that the Headmaster of the School is not the competent Authority. Therefore, the first respondent has to consider the issue.

8. Accordingly, the writ petition is allowed and the impugned order dated 25.03.2019, passed by the third respondent, is set aside and the matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to issue a show cause notice to the petitioner either by himself or through the competent Authority, namely, the concerned Chief Educational Officer, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such show cause, the petitioner is directed to submit her explanation / objection along with documents, if any, within a period of two weeks thereafter. On receipt of any explanation from the petitioner, the Authority competent shall consider the petitioner's case, including her eligibility for incentive increment, and pass appropriate orders on



merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

WEB COPY

/ /2022

Sub Assistant Registrar(CS)

krk

To:

1.The Director of School Education,
(Higher Secondary),
E.V.K.Sampath Building,
D.P.I.Campus, College Road,
Nungambakkam, Chennai-6.

2.The Divisional Accounts Officer (Audit),
School Education Department,
Madurai-2.

3.The Head Master,
Corporation Girls Higher Secondary School,
Kallanai, Tirunelveli Town,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-5805[F] dated 11/02/2022)

+1 CC to M/s.SPL.GP (SR-5698[F] dated 11/02/2022)

W.P.(MD) No.8497 of 2019

and

W.M.P.(MD) No.6645 of 2019

10.02.2022

_RD(25.02.2022) 3P 6C