



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.04.2022
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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Orders Reserved On 18.04.2022	Orders Pronounced On 25.04.2022
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W.P. (MD) Nos.18111, 18114, 18116, 18119, 18121,
18122, 18125, 18128, 18131, 18134 & 18138 of 2019
and
W.M.P. (MD) Nos.14555, 14556, 14559, 14561, 14563, 14564, 14567,
14568, 14570, 14571, 14572, 14573, 14575, 14576, 14580, 14581,
14583, 14584, 14586, 14587, 14589, 14591, 19632, 19636, 19650,
19669, 19642, 19651, 19663, 19648, 19676, 19649 & 19675 of 2019

V.Jaiganesh .. Petitioner W.P. (MD) No.18111 of 2019

1. A.Muthuvelrajan ... Petitioner(s) in WP (MD). 18114/ 2019

1. S.Swarnavalli ... Petitioner(s) in WP (MD). 18116/ 2019

1. S.Vijayalakshmi ... Petitioner(s) in WP (MD). 18119/ 2019

1. V.Deivendran ... Petitioner(s) in WP (MD). 18121/ 2019

1. S.Balakrishnan ... Petitioner(s) in WP (MD). 18122/ 2019

1. S.Kumarappan ... Petitioner(s) in WP (MD). 18125/ 2019

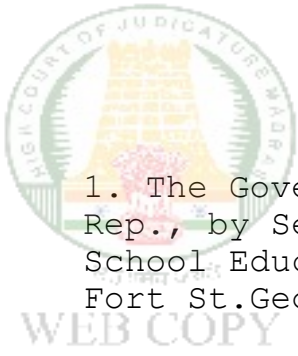
1. R.Prabhu Kannan ... Petitioner(s) in WP (MD). 18128/ 2019

1. S.Anantharaj ... Petitioner(s) in WP (MD). 18131/ 2019

1. P.Kanagaraj ... Petitioner(s) in WP (MD). 18134/ 2019

1. V.Veerapadran ... Petitioner(s) in WP (MD). 18138/ 2019

-vs-



1. The Government of Tamil Nadu,
Rep., by Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 006.

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

.. 1 to 3 Respondents in all WPS

4.The Head Master,
Government High School,
T.Karisalkulam, Sivagangai District.

..4th Respondent W.P.(MD) No.18111 of 2019

4.The Head Master
Ramanathan Chettiar Municipal High School,
Karaikudi,
Sivagangai Dist

..4th Respondent in WP(MD). 18114/ 2019

4.The Head Master Government High School,
Poyyavayal, Sivagangai Dist

..4th Respondent in WP(MD). 18116/ 2019

4. The Head Master
Ramanathan Chettiar Municipal High School,
Karaikudi, Sivagangai Dist

..4th Respondent in WP(MD). 18119/ 2019

4.The Head Master Government High School,
Melanettur, Sivagangai Dist

..4th Respondent in WP(MD). 18121/ 2019

4.The Head Master Government High School,
Melanettur, Sivagangai Dist

..4th Respondent in WP(MD). 18122/ 2019

4.The Head Master Government High School,
Palavangudi Post,



Thiruvelangudi, Sivagangai Dist

..4th Respondent in WP(MD) . 18125/ 2019

4.The Head Master Government High School,
Ilanthaikulam, Keeladi Post,
Sivagangai Dist

..4th Respondent in WP(MD) . 18128/ 2019

4.The Head Master Government High School,
Kanjirankulam, Pottapalayam Post,
Tiruppuvanam Taluk, Sivagangai Dist

..4th Respondent in WP(MD) . 18131/ 2019

4.The Head Master Government High School,
Ilanthaikulam, Keeladi Post, Sivagangai Dist

..4th Respondent in WP(MD) . 18134/ 2019

4.The Head Master Government High School,
Ilanthaikulam, Keeladi Post, Sivagangai Dist

..4th Respondent in WP(MD) . 18138/ 2019

Prayer in WP(MD) . 18111, 18114,18116,18119,18121 and 18122/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned Government Lr.(MS) NO.129 School Education (PK5(2) 2013-1 17.7.2013 issued by the 1st respondent and consequent initiation of recovery proceedings by the 3rd respondent in Na.Ka.No.5821/E3/2016 dt.29.4.2019 and Na.Ka.No.2929/E3/2017 dt.Nil.8.2019 quash the same.

Prayer in WP(MD) . 18125/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned Government Lr.(MS) NO.129 School Education (PK5(2) 2013-1 17.7.2013 issued by the 1st respondent impugned order of the 3rd respondent Na.Ka.No.718/E3/2017 dt.9.4.2019 quash the same and consequently direct the respondent herein to grant selection grade to the petitioner.



Prayer in WP(MD) . 18128/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned Government Lr.(MS) NO.129 School Education (PK5(2) 2013-1 17.7.2013 issued by the 1st respondent impugned order of the 3rd respondent Na.Ka.No.2929/E3/2017 dt.15.4.2019 and impugned order of the 4th respondent in Na.Ka.No.60/2019 dt.13.5.2019 for Rs.1,04,588/- with revised pay scale statement quash the same and consequently direct the respondents herein to grant selection grade to the petitioner on and from 20.3.2007.

Prayer in WP(MD) . 18131/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned Government Lr.(MS) NO.129 School Education (PK5(2) 2013-1 17.7.2013 issued by the 1st respondent impugned order of the 3rd respondent Na.Ka.No.447/E3/2017 dt.29.4.2019 and quash the same and consequently direct the respondents herein to grant selection grade to the petitioner.

Prayer in WP(MD) . 18134/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned Government Lr.(MS) NO.129 School Education (PK5(2) 2013-1 17.7.2013 issued by the 1st respondent impugned order of the 3rd respondent Na.Ka.No.2929/E3/2017 dt.15.4.2019 and impugned order of the 4th respondent in Na.Ka.No.60/2019 dt.13.5.2019 for Rs.78,572/- with revised pay scale statement quash the same and consequently direct the respondents herein to grant selection grade to the petitioner on and from 1.6.2016.

Prayer in WP(MD) . 18138/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the impugned Government Lr.(MS) NO.129 School Education (PK5(2) 2013-1 17.7.2013 issued by the 1st respondent impugned order of the 3rd respondent Na.Ka.No.2929/E3/2017 dt.15.4.2019 and impugned order of the 4th respondent in Na.Ka.No.60/2019 dt.13.5.2019 for Rs.89,656/- with revised pay scale statement quash the same and consequently direct the respondents herein to grant selection grade to the petitioner on and from 2.1.2019.

In all W.Ps.

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



COMMON ORDER

The Writs on hand have been instituted questioning the validity of the impugned Government Letter dated 17.07.2013 issued by the 1st respondent and the consequent action regarding the initiation of recovery by the 3rd respondent.

2. The petitioners are working as B.T. Assistants and acquired M.Phil., qualification admittedly before the date of appointment. In other words, even at the time of appointment as B.T. Assistant, the petitioners were possessing the M.Phil., qualification.

3. The petitioners state that a Teacher is eligible for two advance increments for possessing additional educational qualification. In accordance with the Government Orders, incentive increment was granted to the writ petitioners for possessing M.Phil., qualification. After sanctioning the incentive increment for the additional qualification of M.Phil., degree, the respondents initiated action and cancelled the incentive increment and thereafter, issued orders of recovery.

4. The learned counsel for the petitioners mainly contended that the petitioners are entitled for advance increment for possessing M.Phil., degree. It was rightly sanctioned and subsequently based on the objection, the incentive increment was cancelled and consequential recovery orders have been passed. Thus, the petitioners are constrained to move the present writ petitions.

5. The learned Additional Government Pleader appearing on behalf of the respondents made a submission that the petitioners are working as B.T.Assistants and they acquired the qualification of M.Phil., degree even prior to their appointment into Government service. The petitioners were granted incentive increment for M.Phil., degree from the date of joining, which is contrary to rules.

6. The very basis for grant of incentive increment is to encourage the school Teachers to acquire additional qualification, which would be useful for the students and for the improvement of the education system in our great Nation. The Government at the first instance, issued G.O.Ms.No.42, Education Department, dated 10.01.1969 stating that the Government has accepted the principle that incentive payments and awards should be given to the Teachers in schools who acquire higher qualification in education. Accordingly, the benefit was extended to the Teachers.

7. The claim for incentive increment of higher qualification of M.Phil., is to be considered based on the fact that whether such a higher qualification is relevant for teaching the particular subject or not and for which period, such increment should be granted to

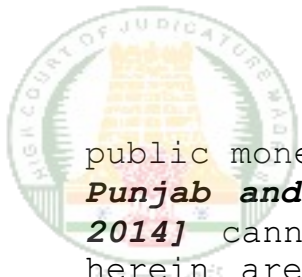


the Teachers. The petitioners have no vested right to claim incentive increment, merely because they acquired the higher academic qualification. The grant of incentive increment is regulated through Government Orders and terms and conditions. If the higher qualification and the knowledge acquired would be of assistance to the teaching standard, then incentive increment is to be granted.

8. Incentive increment is a concession granted by the Government to the Teachers to motivate them. Thus, such concession can never be claimed as an absolute right and it is to be granted strictly in accordance with the terms and conditions stipulated in the policy. Wrong sanctioning of incentive increment to any Teacher cannot be treated as precedent, nor it can be sustained. As per G.O.(1D) No.18, School Education Department, dated 18.01.2013, a graduate Teacher, who had completed M.Ed., or M.Phil., or Ph.D., will be considered for second incentive, as it is a higher educational qualification. A graduate Teacher can be benefited with only two incentives in his / her total service period and the order came into effect from the date of issue, i.e., from 18.01.2013. An amendment to G.O.(1D) No.18, dated 18.01.2013 was issued in G.O.(1D) No.31, School Education Department, dated 12.02.2015 and paragraph 3 of the said Government Order reads as follows:-

"Recommendations of the Director of School Education are carefully scrutinized and accepted that Graduate Teachers/High School Headmaster getting the first incentive for Higher Educational Qualification like M.A., and M.Sc., and Second Incentive Increment as per G.O.(Ms) No.1024, Education, Science and technology Department, dated 09.12.1993, for Higher Educational Qualification of M.Ed., be taken as M.Ed., or M.Phil., or Ph.D., and order are issued with the condition that a teacher for his total service can be sanctioned with two incentives. Moreover, it is ordered that this Incentive Increment can be sanctioned from 18.01.2013."

9. As per the above Government Order, for the post of B.T. Assistant, the degree of M.Phil., was introduced as eligible educational qualification for incentive increment in the year 2013 only. It was new introduction to B.T.Assistants. Therefore, the grant of incentive increment in the present case right from the date of appointment is absolutely in violation of the policy of the Government. The Government, in fact, granted incentive increment for M.Phil., degree to the B.T. Assistants with effect from 18.01.2013 from the date on which B.T. Assistants were made eligible for incentive increment for acquiring higher educational qualification of M.Phil. Thus, the excess increment drawn by those B.T. Assistants is illegal and resulted in unjust enrichment of



public money. The judgment of the Hon'ble Supreme Court ***in State of Punjab and others vs. Rafiq Masih (White Washer) [C.A.No.11527 of 2014]*** cannot be applied in the present case, as the petitioners herein are working as B.T. Assistants and therefore, recovery of such excess amount of incentive increment would not cause extreme hardship for the purpose of setting aside the recovery. The Hon'ble Supreme Court in clear terms held that wherever there is an extreme hardship, in the event of recovery of excess payment, then alone, the recovery is to be set aside and equally the Hon'ble Supreme Court reiterated that any *unjust enrichment* of public money cannot be tolerated and such amounts granted in violation of the statutes or rules are to be recovered from the employees concerned.

10. In the present case, the Government of Tamil Nadu issued G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 directing the Administrative Departments of the Secretariat, Heads of the Department and Heads of the Office to deal with the issue of wrongful / excess payments made to the Government servants / pensioners / family pensioners in accordance with the decision of the Hon'ble Supreme Court in ***Rafiq Masih*** (supra) as detailed below:-

"(i) In all cases where the excess payments on account of wrong pay / pension / family pension fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice immediate corrective action must be taken.

(ii) In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee / pensioner / family pensioner informing him/her of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee / pensioner / family pensioner to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee / pensioner / family pensioner.

(iii) Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees / pensioners / family pensioners who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.

(iv) Recovery should be made in all cases of overpayment barring few exceptions of extreme



hardships as detailed in para 3 above. No waiver of recovery may be allowed without the approval of Finance Department.

(v) While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employees may be allowed to refund the money in suitable installments with the approval of Secretary to Government in the Administrative Department of Secretariat, in consultation with the Finance Department.

(vi) Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc., interest would continue to be recovered from the employee as done hitherto."

11. Pursuant to the said Government Order, corrective actions were initiated by the 3rd respondent and consequently, excess amount of incentive increment paid are sought to be recovered. Thus, the recovery has been made as per the judgment of the Hon'ble Supreme Court and based on the Government Order issued in G.O.Ms.No.286 implementing the orders of the Hon'ble Supreme Court.

12. This Court is of the considered opinion that the petitioners, who are working as B.T. Assistants are getting a decent amount of salary and the recovery of incentive increment which was granted in violation of the Government Orders would not cause any extreme hardship. This apart, the Disbursing Officer has erroneously granted the incentive increment from the date of appointment, which is not contemplated under the Government Orders for grant of incentive increment. Incentive increment is not part and parcel of the regular scale of pay. It is an additional concession granted to the Teachers to encourage them to acquire the higher qualification. Therefore, the incentive increment cannot be claimed as a matter of right and it is to be regulated strictly in accordance with the terms and conditions of the policy.

13. In view of the facts and circumstances, this Court is of the opinion that the petitioners have not made out any acceptable ground for the purpose of considering the relief and therefore, the petitioners are not eligible for incentive increment from the date of appointment, as they were possessing the M.Phil., degree even before the appointment and during the relevant point of time, the benefit of incentive increment for possessing M.Phil., degree was not granted by the Government in the policy of grant of incentive increment and for all these reasons, these writ petitions are devoid



of merit and stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
The Government of Tamil Nadu,
School Education Department, Fort St. George, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 006.

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

4. The Head Master,
Government High School,
T.Karisalkulam, Sivagangai District.

5. The Head Master
Ramanathan Chettiar Municipal High School,
Karaikudi,
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Poyyavayal, Sivagangai Dist

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Melanettur, Sivagangai Dist

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Thiruvelangudi, Sivagangai Dist



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Sivagangai Dist

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10. The Head Master Government High School,
Kanjirankulam, Pottapalayam Post,
Tiruppuvanam Taluk, Sivagangai Dist

+11CC to Mr.K.Appadurai, Advocate, SR.No. 21809 dated 27/04/2022

+1 CC to M/s.SPL.GP. (SR-21480[F] dated 26/04/2022)

W.P.(MD) Nos.18111, 18114, 18116,
18119, 18121, 18122, 18125, 18128,
18131, 18134 & 18138 of 2019
25.04.2022

KS(CO)
KB(09.05.2022) 10P 23C