



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE : 03.03.2022

WEB COPY

CORAM:

THE HON'BLE Mrs JUSTICE S.SRIMATHY

W.P. (MD)No.4015 of 2017
and
WMP (MD)No.3194 of 2017

S.Arockiasamy

... Petitioner

Vs.

1. The Regional Accounts Officer (Audit),
School Education Department,
Madurai-625 002.
 - 2.The Chief Educational Officer,
Dindigul District,
Dindigul.
 - 3.The Headmaster,
Government Higher Secondary School,
N.Panjampatti,
Dindigul District.
 - 4.The Head Master,
Nehruji Memorial Corporation Higher Secondary School,
Dindigul,
Dindigul District.
- ... Respondents.

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 3rd Respondent vide his proceedings in Na.Ka.No/95/2016-2017, dated 05.01.2017 and quash the same as illegal.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.V.Om Prakash
Government Advocate (Civil Side)



O R D E R

The petitioner has filed this writ petition challenging the impugned order, passed by the third respondent, vide his proceedings in Na. Ka. No / 95 / 2016 - 2017, dated 05.01.2017.

2.The case of the petitioner in brief:-

(i) The petitioner was working as a Physical Director-II in the fourth respondent School. The petitioner had completed his B.Sc. degree and Bachelor degree in Physical Education in 'Alagappa University' during the year 1986. The petitioner had joined as a Physical Education Teacher in 'Assumption Higher Secondary School' at Chennai, on 07.06.1989. After obtaining proper permission, he had completed Master degree in Physical Education in the same University during the year 1994. Thereafter, the petitioner joined in the Government Higher Secondary School, Batlagundu, Dindigul District, on 17.03.1998 and the petitioner's service was regularized on 22.12.1999. The petitioner had completed M.Phil. degree and also P.G degree in Yoga in the year 1999. On 06.09.2016, the petitioner was promoted as Physical Director Grade - II. Now, he is working in the fourth respondent's School. After completing Master degree in Physical Education, the petitioner requested the Headmaster to sanction incentive increment for possessing Master degree in Physical Education and the same was denied.

(ii) Even though, the petitioner has possessed the Master degree in Physical Education in the year 1994 itself, the petitioner is not entitled for incentive increment. Since, at that time, he was working in private aided School. He has joined Government School only in the year 1998. Therefore, the respondents have not granted any incentive increment to the petitioner.

(iii) In such circumstance, Special Audit was conducted. During the course of Special Audit, it was reported that the petitioner was paid incentive increment erroneously for the period of 07.06.1989 to 16.03.1998 for his basic qualification while he was working as Secondary Grade Teacher in 'Assumption Higher Secondary School', Chennai, and further directed the respondents 1 & 3 to recover the same. Based upon that, the second respondent has issued Na. Ka. No.25/2008 dated 20.02.2008 and directed to deduct a sum of Rs.15,550/- as monthly installment of Rs.1000/- per month from the petitioner's salary.

(iv) Aggrieved against the same, the petitioner has filed a writ petition in W.P.(MD)No.1863 of 2008 before this Court and this Court has set aside the order and granted liberty to the authorities to proceed further after giving sufficient opportunity to the



petitioner. In such circumstances, without considering the petitioner's objections, again, the second respondent has passed an order, in R.C.No.3533.A4/2008, on 20.09.2011 and insisted the immediate refund of the above said amount. Against which, the petitioner has filed another writ petition in W.P.(MD)No.11642 of 2011 and this Court has dismissed the same on 13.10.2011. Against which, the petitioner has filed a writ appeal in W.A.(MD)No.1388 of 2011 and the same was also dismissed. Hence, the petitioner has submitted a detailed representation to the respondents 2 & 3 to stop the recovery of the above said amount. Since, they failed to grant incentive increment to the petitioner for possession of Master degree (M.Phil.) in Physical Education. Thereafter, he was granted incentive increment from 01.01.2007.

(v) The impugned proceedings passed by the third respondent in Na.Ka.No/95/2016-2017, dated 05.01.2017, stated that one incentive increment has to be granted to the petitioner from the March of 1998 itself since the petitioner has completed his M.Ped. decree in the year June 1994. The petitioner has joined the Government service in the year 1998. The date of appointment of the petitioner, was not taken into account for incentive increment. On his own whims and fancies, for passing M.Ped., incentive increment has been granted from 01.01.2007. Further, the third respondent directed the fourth respondent, to deduct a sum of Rs.2,64,787/- from the salary of the petitioner as per the impugned order passed by the first respondent. Challenging the above said order, the present writ petition has been filed.

3. The learned Government Advocate (Civil Side) appearing for the respondents has reiterated his contentions stated in the counter for substantiating the impugned order.

4. Heard Mr.J.Lawrance, the learned counsel appearing for the petitioner and Mr.V.Om Prakash the learned Government Advocate (Civil side) appearing for the respondents and perused the records.

5. The learned counsel for the petitioner has circulated all the Government Orders relevant to the issue of incentive increment for passing high qualification in Physical Education. Admittedly, the petitioner was granted all incentive increment for passing M.Phil. Now, the question arises for consideration is that the entitlement of Master degree in Physical Education. The petitioner has passed the Master degree in Physical Education in the month of June 1994, while he was serving as Secondary Grade Teacher in a private aided School and he has joined the service of the Government School from 17.03.1998. Since the petitioner sought incentive increment for passing in M.Ped., the same was sanctioned from 01.01.2007 onwards.



6.This Court is of the considered opinion that the petitioner is entitled to incentive increment based on the G.O.Ms.No.42 Education Department, dated 10th January 1968. Where it has been stated under Class-IV and the relevant portion is extracted hereunder:-

'in the case of persons entering service on or after 1st July 1968 possessing the higher qualification, their initial pay may be fixed by giving advance increments in their scale of pay'.

7.In view of the above said order, who is possessing the higher qualification, their initial pay may be fixed by giving advance increments in their scale of pay. In the said GO, under annexure in S.No.1 Physical Training Instructors, I Grade are not eligible for incentive increment for possessing PT or P.Ed. degree or Diploma in Physical Education, since that is the basic qualification for appointment. However the petitioner is possessing Master Degree, he will be entitled to incentive increment. Now, the respondent has granted incentive increment from 2007 onwards. Hence, the recovery is not proper and it is liable to be set aside.

8. Accordingly, the impugned order, passed by the third respondent, vide his proceedings in Na.Ka.No/95/2016-2017, dated 05.01.2017, is hereby set aside. Therefore, the respondents are directed not to recover the amount, which was already paid to the petitioner. Even according to GO.Ms.No.37, if the amount is already paid, the same will not be recovered. The relevant portion of the said G.O.Ms. No.37 Personnel and Administrative Reforms (FR-IV) Department dated 10.03.2020 is as follows:

i. As a policy decision, the scheme of sanction of advance increment for acquiring higher qualification in all departments and all orders issued by all departments for sanction of advance increment for possessing higher qualification, as a whole, be cancelled/dispensed with immediate effect.

ii. The orders issued in the Government Orders fifth to eighth read above cancelled with immediate effect.

iii. The sanction of the advance increment for passing Account Test for Sub-Ordinate Officers-Part-I, as per rulings (3) &(4) under FR 31-A be dispensed with immediate effect.

iv. The advance increment for acquiring higher qualification already granted to Government Servants need not be effected any recovery.



v. All the departments of Secretariat/Head of the Departments are requested to take up a review on this issue with reference to the special / adhoc rules of the posts (entry to higher level) of the department concerned and to prescribe higher qualification to the posts where ever necessarily required, so as to improve the services of the department concerned.

vi. The cases of Government Servants who have acquired higher qualification prior to issue of this general order, and not sanctioned with advance increments be examined separately as per the previous orders issued, if any, by the administrative department concerned and with reference to the posts specified in that order and if he is otherwise qualified, then the advance increment may be sanctioned by the administrative department concerned after obtaining concurrence of Finance department. If no previous orders were issued by any of the department concerned, then they are not eligible for sanction of any advance increment for passing higher qualification irrespective of the post held/degree acquired.

vii. No fresh / further proposals will be entertained by Personnel and Administrative Reforms Department on this issue, in future.

9.The above said G.O. states that no fresh / further proposals will be entertained by Personnel and Administrative Reforms Department on this issue, in future.

10.The petitioner is entitled for incentive increment and therefore, the respondents are directed to pay the incentive increment for the further period also.

11.With the above direction, this Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Regional Accounts Officer (Audit),
School Education Department,
Madurai-625 002.
 - 2.The Chief Educational Officer,
Dindigul District,
Dindigul.
 - 3.The Headmaster,
Government Higher Secondary School,
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Dindigul District.
 - 4.The Head Master,
Nehruji Memorial Corporation Higher Secondary School,
Dindigul, Dindigul District.
- +1 CC to M/s.J.LAWRANCE, Advocate (SR-9929[F] dated 04/03/2022)
- +1 CC to M/s.SPL GP (SR-10186[F] dated 04/03/2022)

W.P. (MD)No.4015 of 2017
and
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MGJ(30.03.2022) 6P 7C