



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2022

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) No. 19141 of 2018

and

WMP (MD) Nos. 16994, 16995 & 22440 of 2018

M. Tamilvalavan ..Petitioner

Vs

1. Government of India  
Represented by Deputy Educational Adviser,  
Ministry of Human Resources Development,  
Government of India,  
New Delhi.
2. State of Tamil Nadu,  
Represented by its Principal Secretary,  
Department of School Education,  
Fort St. George,  
Chennai -9.
3. The Director of School Education,  
O/o. The Director of School Education,  
DPI Campus,  
Chennai - 6.
4. The Joint Director of School Education (Personnel),  
O/o. The Joint Director of School Education (Personnel),  
DPI Campus,  
Chennai -6.
5. The Chief Educational Officer,  
O/o. The Chief Educational Officer,  
Sivagangai District,  
Sivagangai.
6. The District Educational Officer,  
O/o. The District Educational Officer,  
Thiruppathur,  
Sivagangai District.
7. The Headmaster,  
Government Higher Secondary School,  
Eriyur - 639 566,  
Sivagangai District.



8. The Regional Accounts Officer (Audit)  
School Education,  
Tallakulam,  
Madurai - 625 002.

.. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorari to call for the records pertaining to the impugned order in Na.Ka.No.90/2018 dated 30.07.2018 on the file of respondent No. 7 and quash the same as illegal and pass orders.

|                 |   |                                                                                                       |
|-----------------|---|-------------------------------------------------------------------------------------------------------|
| For Petitioner  | : | Mr. Karthik<br>for M/s. T. Lajapathi Roy                                                              |
| For Respondents | : | Mr. V. Om Prakash,<br>Government Advocate,<br>for R2 to R8<br>Mr. H. Lakshmi Shankar (CGSC)<br>for R1 |

### ORDER

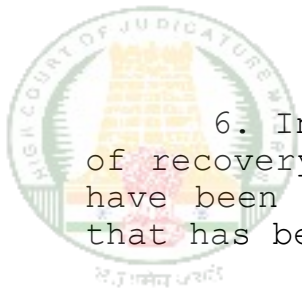
The petitioner had joined the Government Higher Secondary School, Thirupputhur as a Graduate Teacher in Mathematics on 02.03.2006. He had acquired higher qualification of an M.Sc. in 2004 and a B.Ed. in 2005 and in 2008 pursued his M.Phil through Vinayaka Missions University after following the due procedure in this regard.

2. The M.Phil course was completed in June 2009. He had been granted two incentives for PG qualification which are sought to be recovered now through impugned proceedings dated 30.07.2018. The impugned order has not been passed in consonance with the principles of natural justice.

3. That apart, the basis on which the recovery is sought to be effected is that Vinayaka Missions University is not an approved university and hence the M.Phil awarded by that University does not entitle the petitioner to the incentive.

4. I desist from dealing further with this issue insofar as the same is stated to be pending before the Division Bench for resolution in W.A.Nos.2725 and 2343 of 2018.

5. The approval and acceptance of the course conducted by Vinayaka Missions University would have an impact upon the fixation of salary and service benefits of the petitioner and hence as far as the re-fixation is concerned, this matter would be subject to the decision to be rendered by the Division Bench in the aforesaid writ appeals.



6. In this writ petition, I would confine myself to the aspect of recovery initiated by the respondents of the two incentives that have been awarded to the petitioner on the strength of the M.Phil that has been awarded to him.

7. The arguments advanced in this regard turns upon the ratio of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others vs. Rafiq Masih* (2015 (4) SCC 334) in short referred to as *White Washer's Case*.

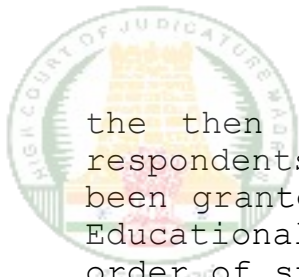
8. One of the guidelines issued therein is that recovery if any is to be initiated within a period of 5 years from the allegedly offending event. The offending event in this case is dated 04.02.2013 and hence recovery if any ought to have been initiated or not before 03.02.2018. The impugned order in this case is dated 30.07.2018 which is beyond the period of 5 years.

9. When confronted with this factual position, learned Additional Government Pleader would refer to proceedings dated 03.08.2017 which, it transpires, is an audit objection, on the basis of which, the recovery has been ordered. The audit objection cannot be construed to be the offending event for computation of the period of 5 years and the event would have to be the grant of incentive only which is dated 04.02.2013. Thus, the argument of learned Additional Government Pleader to this effect and reliance on the date of the audit objection is misconceived and is rejected.

10. An additional point in favour of the petitioner in this case is the manner in which the proceedings have been conducted. The petitioner has approached this court in W.P. (MD) 27244 of 2013 challenging clarification dated 17.07.2013 on the grant of incentive increment to similarly placed employees, that writ petition came to be dismissed by a learned Single Judge on 22.10.2018. The learned Single Judge found that there was an apprehension in the mind of those petitioners that clarification dated 17.07.2013 would stand as a hindrance for the continuance of the increment already granted.

11. He thus concluded that a writ petition could not be entertained based on an apprehension and since there had been no positive action initiated by the respondents that would crystallise into a cause of action. It would have been appropriate had the petitioners referred to this writ petition in their affidavit at least for completion of narration of facts. This is not been done. However, in my view, though an omission, it would not be fatal to their case in deciding the challenge to the impugned order.

12. I would, however not take the same lenient view in regard to the conduct of the respondents. The present writ petition had been listed for admission on 04.09.2018 along with connected miscellaneous petition seeking interim protection. While noting that



the then Special Government Pleader had accepted notice for the respondents, an order of unconditional interim stay of recovery had been granted. This order binds all respondents including the Chief Educational Officer who is arrayed as R5 in the writ petition. The order of stay is operative as of date, despite which the respondents appear to have prevailed upon the petitioner to accept a scheme of instalments for repayment of the incentives already granted and have obtained an undertaking dated 09.08.2019 to such effect.

13. Learned Additional Government Pleader would attempt to state that such acquiescence was voluntary. However, I am unable to accept this as the petitioner was holding the benefit of interim protection and has challenged the order of recovery and thus it does not seem plausible or acceptable that the petitioner would make a complete turn around and compromise his own case and interests in this manner.

14. This acquiescence has been taken advantage of by R5 who has passed proceedings dated 13.08.2019 computing the recovery to be effected from the petitioner despite the interim protection that is in force. The aforesaid proceedings amount to rank contempt and shall be withdrawn within a period of one week from today.

15. As far as the recovery is itself is concerned, I have referred to the dictum of the judgment of the Hon'ble Supreme Court in *White Washer's Case* to the effect that recovery, if any, must be initiated 5 years from the offending event which time period has been breached in the present case. The impugned order of recovery is thus set aside, and the writ petition allowed. Any and all amounts recovered from the petitioner pursuant to the impugned order shall be repaid within a period of two weeks from today. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

mnr

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

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Ministry of Human Resources Development,  
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New Delhi.
2. The Principal Secretary,  
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+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate ( SR-815[F] dated 07/01/2022 )

+1 CC to M/s.SPL.GP ( SR-968[F] dated 10/01/2022 )



**W.P.(MD) No.19141 of 2018**

+1 CC to M/s.T.LAJAPATHI ROY, Advocate ( SR-733[F] dated  
07/01/2022 )

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