



WP(MD).No. 8280 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

WP(MD).No. 8280 of 2016 and  
WMP(MD).No.6709 of 2016

S.Albert

: Petitioner

Vs.

1. The District Educational Officer,  
Thoothukudi,  
Thoothukudi District.

2.The Tuticorin Diocesan Association,  
(Registration No.1/1937038)  
rep. by is Procurator & chief Functionary,  
Thoothukudi District.

3.The Manager,  
R.C.Schools,  
Tuticorin Diocese,  
Thoothukudi.

4. The Correspondent,  
St. Mary's Higher Secondary School,  
Pothakalanvilai,  
Sattankulam Taluk,  
Thoothukudi District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India



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to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings in O.Mu.No.4734/B4.2015, dated 20.09.2015 and Na.Ka.No.1502/B4/16, dated 28.03.2016 of the 1<sup>st</sup> respondent and quash the same and consequently, direct the respondents to disburse the pensionary benefits, Earned Leave Surrender amount for 15 days as on 30.04.2014, encasement of earned leave, Provident Fund, Special Provident Fund, yearly increment from 01.04.2015, gratuity and all other attendant benefits, with interest @ 12% to the petitioner.

For petitioner : Mr. T.Pon Ramkumar  
for M/s. J. Ashok

For R1 : Mr.Om Prakash  
Government Advocate

For R2 to R4 : Mr.V. John Kennedy

### **ORDER**

This Writ Petition has been filed to call for the records relating to the impugned proceedings in O.Mu.No.4734/B4.2015, dated 20.09.2015 and Na.Ka.No.1502/B4/16, dated 28.03.2016 of the 1<sup>st</sup> respondent and quash the same and consequently, direct the respondents to disburse the pensionary benefits, Earned Leave Surrender amount for 15 days as on 30.04.2014, encasement of earned leave, Provident Fund, Special Provident Fund, yearly increment from 01.04.2015, gratuity and all other



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attendant benefits, with interest @ 12% to the petitioner.

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2. The brief facts of the case are that the petitioner was appointed as a Craft Teacher in the 4<sup>th</sup> respondent school in the year 1986. While he was working as a Craft Teacher, he completed B.A., (Tamil) in the year 1992 and B.Ed., in the year 1993. As per G.O.Ms.No.42, dated 10.01.1969 pre vocational instructors are entitled for advance increments if they acquired B.T., or B.Ed., qualifications. Since the petitioner satisfied his eligibility to receive the two incentive increments for acquiring B.Ed., degree, the first respondent through his proceedings in R.L.No.5349 P4/S4, dated 08/1994 had sanctioned the two incentive increments with effect from 27.08.1993. Thereafter, the petitioner obtained Master Degree (M.A.,) in Tamil. As per the Government Order in G.O.Ms.Nos.1023 and 1024, dated 09.12.1993, the amendment was brought in G.O.Ms.No.42, dated 10.01.1969, wherein the additional advance increments were granted to the persons who possessed higher qualification of PG Decree. Accordingly, the petitioner was granted two more additional increments for acquiring M.A., qualification through first respondent proceedings in O.Mu.No.3978 / B3 / 99, dated 23.09.1999 with effect from 27.05.1997. The petitioner has attained the age of superannuation on 31.05.2015 and



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the 4<sup>th</sup> respondent neither relieved him from service nor allowed to perform the duty after 31.05.2015 and not paid any pensionary benefits. The impugned proceedings in O.Mu.No.4734/B4/2015, dated 20.09.2015 and Na.Ka.No.1502/B4/16, dated 28.03.2016 was issued by the first respondent through the proceedings, dated 20.09.2015 and the incentive increments granted for possession of M.A., Degree was cancelled and recovery was ordered from his salary. Till now, the petitioner was not paid any pension and he has not even paid Provident Fund amount. Hence, he has filed the present Writ Petition.

3. The learned counsel for the petitioner submitted that the issue with regard to the grant of advance increment was already observed by this Court in WP.No.5730 of 2008, dated 19.09.2011 and subsequently in W.P.No.30183 of 2008 and the decision made in W.P(MD).No. 30183 of 2008 was confirmed by this Court in W.A.No.1792 of 2019, dated 16.12.2020. He further submitted that the petitioner comes under “C” Grade teacher as on 02.06.1999, therefore, the recovery made from the salary after his retirement and after a period of exceeding five years is contrary to the dictum laid down by the Hon'ble Supreme Court reported in **2015 (4) SCC 334 (State of Punjab and others Vs. Rafix Masih (White**



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*Washer*) and prayed for quashing the impugned proceedings and for a direction for payment of monetary benefits.

4. Per contra, the learned Government Advocate appearing for the first respondent would submit that as per the G.O.Ms.No.42, the petitioner is entitled only for two advance increments and he was not entitled for advance increment for possession of M.A., Degree. Therefore, the increment granted for possession of M.A., was rightly cancelled and recovery ordered. He further submitted that the petitioner has not co-operated with the school management for processing the pension proposal. That is the reason for non payment of his pension.

5. The learned counsel appearing for the respondents 2 to 4 submitted that so far as the respondents are concerned, the pension proposal for the petitioner was submitted to the first respondent. It is for the first respondent to process pension proposal and pass appropriate orders.

6. I have heard the rival submissions made on either side and perused the records.



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7. From the facts narrated above it is seen that the petitioner was originally appointed as a Craft Teacher and then, he possessed B.A., B.Ed., qualification and was granted two advance increments. Subsequently, he added his educational qualification by completing M.A., in Tamil. For this Master's Degree, he was again granted two advance increments. It is not in dispute. The issue herein is whether the grant of two advance increments for possessing M.A., degree is right or not. The said issue was already came out up consideration before this Court in W.P.No.5730 of 2008, dated 19.09.2011 in an identical case. The relevant paragraphs 9 and 10 of the said order reads as follows:

*9. As rightly pointed out by the learned counsel for the petitioner G.O.Ms.No.42 clearly stipulates that advance increments shall be granted to teachers for each higher qualification acquired by them as indicated in the annexure in the Government order. The annexure also states a teacher belonging to the category mention in column I of the table contained in the annexure shall be entitled to two advance increments if he possess of acquires higher qualification. Thus to mean qualification higher than the prescribed qualification. It is not in dispute that vocational instructors fall under the category of Specialist Teachers who are also entitled to advance increments as the said category of teachers finds place in serial No.8 of the annexure to G.O.Ms.No.42. Subsequently, G.O.Ms.No.42 was amended by restricting the number of advance increments to four; however the concession earlier granted was admissible to past cases who have already obtained*



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*the higher qualification as mentioned by the Government order. The said Government Order in G.O.Ms.No.1023 was further amended by Government Order in G.O.Ms.No.1024 and paragraph 2 of the G.O.Ms.No.42 was substituted to state that a secondary grade teacher who has possessed B.T or B.Ed., and obtained two advance increments shall be eligible for another two advance increments for passing M.A., M.Ed., degree. As noticed above, the basis for granted of these advance increments is by virtue a scheme introduced by the Government by G.O.Ms.No.42, dated 10.01.1969. The scheme does not make any distinction in the annexure and the term used in the annexure is a 'teacher'. Therefore, we can safely conclude that a teacher shall include a secondary grade teacher, B.T., Assistant, Headmaster, Tamil Pandits, Physical instructors and Specialist Teachers like the petitioner. Therefore, when the Government decided to grant two more advance increments for acquiring M.A., or M.Ed., qualification, the same cannot be denied to a Vocational Instructor / Specialist Teacher who falls in category 8 of G.O.Ms.No.42. The Distinction which is sought to be made by the third respondent that the petitioner is not eligible for further additional increment since he still continues as a specialist teacher is untenable. The Government order in G.O.Ms.No.42 does not make any such increments for acquiring B.A., and B.Ed., qualifications there is no reason as to why the benefit of two more advance increments should not be granted for such specialist teacher for having acquired post graduate qualifications.*

*10. This issue has already been settled by the Honorable Division Bench in the above referred decision, therefore, the stand taken by the Department for denying two advance increments to the petitioner*



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*for having acquired post graduate qualification is held to be untenable and accordingly, the petitioner is entitled to succeed and the Writ Petition is allowed with direction to the respondents to grant two additional incentive increments to the petitioner for acquiring the post graduate M.A., qualification.”*

8. In another Judgment of this Court in W.P.No.30183 of 2008, dated 28.02.2018, it was observed that the Craft Teacher is equivalent to the Secondary Grade Teachers. The relevant portion of the said order reads as follows:

*“17. From the reading of Government orders which filed in the typed set of the Writ Petition it is stated that the Craft Teacher is equivalent to the post of Secondary Grade Teacher and the scale of pay is also equivalent and also further says that what are all the benefits sanctioned to the Secondary Grade Teachers is also applicable to the Craft Teachers, whereas the respondent has sanctioned incentive increments to the Second Grade Teachers for acquiring M.A., Degree higher qualification, but the same benefits was not granted to the petitioner. Hence, the impugned order is liable to be set aside as it is against the Article 14 of the Constitution of India.”*

9. Later, this order is also confirmed by the order of this Court dated 16.10.2020 made in W.A.No.1792 of 2019. From this Judgment it is made clear that the grant of advance increment for a Craft Teacher for possessing of B.A., B.Ed., qualification and the grant of two advance



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increments for possessing M.A., Degree cannot be found fault with.

10. Therefore, this Court is of the considered view that the grant of two advance increments for the petitioner possessing B.A., B.Ed., and another two advance increments for M.A., degree is right and justified as per G.O.Ms.No.42, dated 10.01.1969 and G.O.Ms.Nos.1023 and 1024, dated 09.12.1993. Another question that arise for consideration of this Court is that whether the recovery made after retirement of the petitioner or the recovery made after more than five years is justified. This question was again settled by the Hon'ble Supreme Court reported in **(2015) 4 SCC 334** in the case of State of **Punjab and others Vs. Rafiq Masih (White Washer) and others**, wherein at paragraph No.18 it is observed as follows:

*“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein the recoveries by the employers, would be impermissible in law:*

*(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*

*(ii) Recovery from the retired employees, or the employers who are due to retire within one year, of the*



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*order of recovery.*

*(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(v) In any other case, where the court arrives at the conclusion that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far out weigh the equitable balance of the employer's right to recover.”*

11. The learned counsel appearing for the petitioner submitted that the petitioner is a “C” Grade employee and he attained the age of superannuation on 31.05.2015 and now, the recovery is sought for from 23.09.1999. It is also brought to the notice of this court that the petitioner was permitted to retire from service and he was not even paid his Provident Fund and other amounts which he is legally entitled also. The recovery sought to be made from the petitioner cannot be justified for the reason that he is a Grade “C” employee that the recovery sought to be made after his retirement and after a period of more than five years. Hence, the impugned orders are quashed the respondents are directed to expedite the process of settling the petitioner's pensionary benefits and other monetary



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benefits as early as possible preferably within a period of three months from the date of receipt of a copy of this order. For the delay caused in disbursing the pensionary and other other monetary benefits, this Court is of the view that the petitioner is entitled for interest at the rate of 12% from the date of its due to the date of promotion as due as claimed in the Writ Petition.

12. Accordingly, this Writ Petition is allowed as prayed for. No costs. Consequently, the connected Miscellaneous petition is closed.

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Index : Yes/No  
Internet: Yes/No  
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G. CHANDRASEKHARAN, J.,

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