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Writ Appeal No.506 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:03.10.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.506 of 2019
and C.M.P.No.4411 of 2019**

1. The Financial Consultant and Accounts Officer (Audit),
Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
 2. The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.
 3. The District Educational Officer,
Chengalpet, Kancheepuram.
 4. The Head Master,
Government Higher Secondary School,
Pallikaranai, Chennai – 600 100.
- ... Appellants

Vs

K.Sakthivelu

.. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the orders dated 06.11.2017 made in W.P.No.32888 of 2013.



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For Appellants : Mr. Vadivelu Deenadayalan
Additional Government Pleader

For Respondent : Mr.S.Nedunchezhiyan

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This Writ Appeal had been directed against the order passed by the Writ Court dated 06.11.2017 made in W.P.No.32888 of 2013.

2. The respondent one Sakthivel was initially appointed as part time Vocational Instructor and had been subsequently made as a full time Vocational Instructor by proceedings dated 28.11.1996. Thereafter, he had acquired the qualification of B.Ed degree and also subsequently acquired the qualification of M.A degree. For acquiring such additional qualifications, since he is entitled to receive the additional incentive increment, it was considered and accordingly for the additional qualification of B.Ed degree, an incentive increment was given. Subsequently, the additional qualification of M.A degree was also considered for the second incentive increment and that was also given to him.



WEB COPY 3. However, the audit team raised the objection by quoting G.O.Ms.No.42, Education Department, dated 11.01.1969, whereby insofar as the teachers like the respondent, who are fall under the category of other specialist teachers would be entitled to receive the additional incentive increment only for acquiring the additional qualification of B.T or B.Ed degree or other recognized equivalent degrees in the State. Therefore, for acquiring the qualification of M.A. Degree, since the respondent is not entitled for additional incentive increment, which was wrongly given to him, hence the appellant Department issued a recovery proceedings dated 27.11.2013, which was under challenge before the Writ Court.

4. The learned Judge, who heard the writ petition has found that, before issuing the recovery proceedings dated 27.11.2013, no notice had been given, therefore, which is violation of principles of natural justice. Secondly, the respondent retired on superannuation from 31.05.2017 and also since the respondent did not make any misrepresentation to get the second incentive increment for having acquired the qualification of M.A. degree, it cannot be found against him, therefore, after a lapse of so many



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years and since he has retired in the year 2017, the recovery proceedings initiated on 27.11.2013, which was already stayed by the Writ Court during the pendency of the writ petition, the learned Judge has come to a conclusion that the appellant Department is not entitled to make any recovery of alleged excess amount. In view of the withdrawal of the second incentive increment given to him already for acquiring the M.A. Degree, the learned Judge applying the ratio of *State of Punjab and Ors. Vs. Raffiq Masih [White Washer's case]* reported in *2015 4 SCC 334* had allowed the said writ petition, as against which, the present appeal had been directed.

5. Heard the learned Additional Government Pleader appearing for the appellant Department as well as the learned counsel appearing for the respondent.

6. G.O.Ms.No.42, Education Department, dated 10.01.1969 has made it clear that, what are all the categories of teachers, for whom, what kind of incentive increment can be extended.



7. There are eight categories of teachers mentioned in the G.O, where category No.8 is other specialist teachers, which means, the Vocational Teacher etc., therefore, the respondent comes under the category of other specialist teachers, for whom, the incentive increment would be extended only on acquiring the qualification of B.T or B.Ed degree or other recognized equivalent degrees in this State. For acquiring the B.Ed degree, incentive increment has already been extended to the respondent.

8. However, though the respondent had acquired the additional qualification of M.A. Degree, for which second incentive increment also had been extended that was found to be an unlawful extension by the audit team.

9. Even though it was argued by the learned counsel appearing for the respondent that the post of full time Vocational Instructor is equivalent to Secondary Grade Teacher, for whom the additional degree also can be taken into account for the purpose of giving the second incentive increment, which has been stated in paragraph 2 of the said G.O.Ms.No.42, we do not find any merit in the said contention made by



the learned counsel for the respondent, for the simple reason that by proceedings dated 28.11.1996, the respondent has been posted as full time Vocational Instructor, where the following condition is one of the conditions imposed:

“3) Since he did not undergo regular Training, his post is not considered as equal to sec grade post and as such, he will not be considered for promotion from sec grade post as per rules.”

10. Therefore, at no stretch of imagination, it could be stated that, the post of full time Vocational Instructor can be treated on par with Secondary Grade Teachers. Therefore, whatever the benefits that would be entitled for those, who are holding the post the Secondary Grade Teachers would also to be extended to the Other Specialist Teachers like the respondent as projected by the learned counsel for respondent is liable to be rejected.

11. Now coming to the relief given to the respondent by the Writ Court, which is under challenge in this writ appeal is concerned, the learned Judge has correctly applied the principle laid down in **Raffiq**



Masih's case i.e., **White Washer's** case cited supra.

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12. During the pendency of the writ petition, the recovery proceedings dated 27.11.2013 was stayed, therefore, the recovery was stopped. However, on superannuation certain amount payable to the respondent have been withheld. Since the respondent retired from service on 31.03.2017, at this juncture, the question of recovery does not arise, if we strictly construed the principle laid down by the Hon'ble Supreme Court in **Raffiq Masih's** case cited supra.

13. Therefore, the said approach of the learned Judge also cannot be said to be an erroneous one.

14. In view of the above, this writ appeal fails, therefore, it is liable to be dismissed, accordingly, it is dismissed.

15. Resultantly, the respondent is entitled to get the withholding amount, if any at the time of superannuation from the employer and also no recovery shall be made from the respondent on the ground of excess payment of second incentive increment had been made to him during his



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service for acquiring the higher qualification of M.A. Degree.

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16. The needful as indicated above shall be undertaken by the appellant Department within a period of eight(8) weeks from the date of receipt of a copy of this order.

With these observations and directions, this writ appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

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