



W.P.No.28216 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

Writ Petition No. 28216 of 2015

A. Vijaya

.. Petitioner

VS

1. District Elementary Educational Officer,
Salem.
2. The Assistant Elementary Educational Officer,
Salem.
3. Sri Saradha Bala Mandir Aided Primary School,
No.81, Cherry Road, Salem - 7.
rep. by its Secretary

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order No.NIL dated 21.08.2015 passed by the 3rd respondent and countersigned by the 2nd respondent and quash the same and direct the respondents to confer all the consequential benefits on the petitioner.

For Petitioner	: Mr.V.Sivalingam
For respondents	: Mr.S.Mythreye Chandru Special Government Pleader for R1 and R2 Mr.M.R.Raghavan for R3



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ORDER

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This writ petition has been filed challenging the order passed by the 3rd respondent, in which, the respondent has ordered recovery of the incentive increment sanctioned to the petitioner on 01.04.2015 with effect from 01.06.2002 and directed the petitioner to deposit the entire amount in lump sum.

2. The case of the petitioner is that she was appointed as Secondary Grade Assistant on 01.03.2002, sponsored through Employment Exchange in Scheduled Caste category. She is entitled for incentive increment for acquiring B.T. qualification and for promotion. However, the Government, while issuing orders for filling up the vacancy for Secondary Grade Assistant vide G.O.Ms.No.301 dated 15.10.1999 has also imposed a condition that those who were appointed are not entitled for any promotion and also incentive increment for acquiring B.Ed. degree. Therefore, the petitioner made representation to the Government. Likewise, other similarly placed persons also sent representations. When the representations were not considered, they approached this Court and filed writ petition. This Court



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issued direction to consider their claim and pass orders. Accordingly, G.O.Ms.No.26 dated 02.02.2011 was passed enabling the Secondary Grade Assistant working with B.T. qualification to get promotion and also extended all the benefits available to them. Since the petitioner possessed M.A.(English) which is higher qualification, she was sanctioned incentive increment on 01.04.2015 with effect from 01.06.2002. While so, the 3rd respondent issued order of recovery on 21.08.2015 and directed the petitioner to deposit the entire amount in lump sum. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the 1st and 2nd respondents and the learned counsel appearing for the 3rd respondent.

4. Learned counsel for the petitioner would submit that before ordering recovery, no opportunity was given to the petitioner, which is against the principles of natural justice. Learned counsel would further



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submit that in the appointment order, no such condition was imposed i.e., denial of promotion and incentive increment which is available to other Secondary Grade Teachers for higher qualification. Even assuming without admitting, the condition in respect of incentive increment is applicable only for B.Ed. qualification, for which, a Secondary Grade teacher is entitled to, and they cannot deny incentive increment for other higher qualification such as M.A., as in the instant case. He would further submit that when other Secondary Grade Teachers are eligible for incentive increments for higher qualification of M.A., denial of the same benefit to the petitioner would amount to discrimination and therefore, liable to be interfered with by this Court.

5. On the contrary, learned Special Government Pleader would submit that in the instant case, the pay fixed to the petitioner is wrong and the excess amount has to be recovered from her pay. As directed by the Audit authority, the recovery was ordered and the individual was informed to remit the excess amount to the Government account by remitting a chalan in



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the treasury and the pay was revised to her old pay. Even in the appointment order, it was stated that it is a conditional appointment that she should not claim incentive increment for her higher qualification. She accepted the same and joined duty. Further, notice was also given to the petitioner for the said recovery and the recovery was ordered within a short period. Therefore, the petitioner cannot claim monetary benefits after a lapse of 18 years. She would further submit that the petitioner had obtained the M.A., degree after coming into service without prior permission from the department. Hence, she would pray to dismiss the writ petition.

6. This Court considered the rival submissions and perused the materials available on record.

7. The petitioner has challenged the order of recovery passed by the respondent, by which, she has been directed to remit the incentive increment sanctioned to her in lump sum. At the time of admission of this writ petition, interim stay against the order of recovery of amount was granted and



subsequently, on 13.12.2019, the interim stay granted was made absolute.

8. If the petitioner is granted incentive increment for B.Ed. degree qualification, while she was holding the post of Secondary Grade Teacher, the same is not correct and the excess amount paid towards incentive increment for B.Ed., degree qualification shall be recovered and refixation shall be made, but it is not so. On the other hand, the petitioner was granted incentive increment for acquiring Post Graduate Degree namely M.A.(English). The very purpose of granting incentive increment is to encourage the Teachers to acquire higher qualification as the same would ultimately benefit the students. The knowledge acquired by the Teachers by acquiring higher qualification is rewarded by way of incentive increment only for the benefit of the students. The petitioner acquired Post Graduate Degree qualification, for which, incentive increment was rightly paid. But unfortunately, the audit made objection as if the petitioner is not entitled to incentive increment for higher qualification which was a condition made at the time of appointment. Since the petitioner was appointed as Secondary



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Grade Teacher, due to non-availability of Secondary Grade qualified persons, a condition was imposed that such Teacher should not claim incentive increment for higher degree qualification. But the same cannot be stretched to deny incentive increment for the Post Graduate degree obtained by the petitioner.

9. At this juncture, it is relevant to note that the Division Bench of this Court in R.Premkumari vs. State of Tamil Nadu [2008 (5) MLJ 1349] has held that the purpose of granting incentive increments is for attracting higher qualified people or for encouraging the existing employees to acquire higher qualification and therefore, the Teachers, who acquired higher qualification are entitled to incentive increments.

10. This Court is of the view that the audit objection referred to above is contrary to the aforesaid Division Bench judgment of this Court. Further, insofar as the contention of the learned Special Government Pleader that the petitioner obtained M.A. degree without prior permission from the department is concerned, the petitioner was appointed as B.T. Assistant on



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1.3.2002 and M.A., degree was issued to her on 11.12.2002 for the examination held in May, 2002. While entering into service, the petitioner was almost at the stage of completing post graduate degree. Therefore, the question of prior permission to undergo the course of M.A. degree will not arise.

11. For the all reasons stated above, this Court is of the opinion that the petitioner is entitled to succeed in this writ petition. Accordingly, the Writ Petition is allowed and the impugned order of recovery dated 21.08.2015 is set aside with a direction to the respondents not to recover any amount from the petitioner on the basis of the audit objection and to confer all consequential benefits to the petitioner. No costs.

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Index:Yes/No
Speaking/Non-speaking order
vsi



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- To
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Salem.
 2. The Assistant Elementary Educational Officer,
Salem.



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J.NISHA BANU,J.

vsi

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