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W.P.No.26134 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 26134 of 2016

M.J.Ramavathy

... Petitioner

Versus

1.The Chief Educational Officer,
Salem.

2.The Regional Accounts Officer(Inspection)
Office of the Regional Accounts Officer,
Educational Department,
Raja Veethi, Coimbatore 641001.

3.The Headmaster,
Government High School,
Kondayampalli and post,
Gengavalli Taluk,
Salem District 636 110.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorari, calling for the records relating to the 3rd respondent by proceedings Na.Ka.No.101/2016-2017 dated 05.07.2016 and to quash the same.



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For Petitioner : Mr.K.K.Senthilvelan, Senior Counsel
for Ms.Jeeveetha

For Respondents :Mr.M.Shahjahan
Special Government Pleader

ORDER

This writ petition has been filed seeking issuance of a writ of Certiorari to quash the proceedings in Na.Ka.No.101/2016-2017 dated 05.07.2016 on the file of the 3rd respondent.

2. The case of the petitioner is that she was appointed as Physical Education Teacher on temporary basis by the 1st respondent on 15.02.2007 in Government High School, Kondayampalli, Salem District. Subsequently, her services were regularized by the 1st respondent on 31.12.2009 with effect from 15.02.2007. On 05.07.2016, the petitioner was shocked to receive the impugned order stating that the incentive granted to the petitioner from 15.02.2007 to 01.01.2016 was cancelled and she was called upon to repay the entire incentive amount of Rs.1,42,266/- within a period of one month



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from the date of said impugned order. It is the grievance of the petitioner that the impugned order was passed without any notice to the petitioner and contrary to the proceedings of the Director of School Education, Chennai.

3. The respondents have filed a counter stating that G.O.Ms.No.95 Education Department dated 21.01.2080 was issued in partial modification of the orders issued in G.O.Ms.No.42 Education Department dated 10.01.1969 and G.O.Ms.No.1032 Education Department dated 22.06.1971, in so far as it related to sanction of advance increments to Physical Directors and Physical Educational Teachers Grade I and II. Accordingly, one incentive increment could be awarded for higher qualification of degree from the university in the State or degree from other universities recognised as equivalent thereto or Diploma in Physical Education / M.P.Ed (2 additional increments). In view of the same, the petitioner having obtained the degree of B.P.Ed only in the year 1993, it cannot be construed as higher qualification and therefore, respondents are justified in recalling the order granting incentive to the petitioner.



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4. Heard the learned Senior Counsel for the petitioner and the learned Special Government Pleader for the respondents.

5. Admittedly, the petitioner was given a benefit of advance increment and the amount were also duly paid. The learned Senior Counsel for the petitioner relied on the ratio laid down by the Hon'ble Supreme Court in the case of *Thomas Daniel Vs. State of Kerala and others reported in CDJ 2022 SC 509* where the Hon'ble Supreme Court was dealing with the matter where excess payments were made to teachers on account of mistake and wrong interpretation of prevailing rules. The Hon'ble Supreme Court held that excess payment made by mistake, incorrectly interpreting the rules and which was subsequently discovered, cannot be a ground to seek recovery of excess amount already paid to the concerned teachers. The facts of the present case also clearly indicated that the mistake was occasioned because of the wrong interpretation of the relevant G.O.s and for no fault of the petitioner, she cannot be called upon to refund the excess amount already paid to her.



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6. Accordingly, the writ petition is allowed and the impugned order in Na.Ka.No.101/2016-2017 dated 05.07.2016 passed by the 3rd respondent is set aside. No costs.

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Index: Yes/ No
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P.B.BALAJI, J.,

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