IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18132 of 2023
and
W.M.P.Nos.17330 & 28800 of 2023

S.Sujatha ...Petitioner

-Vs-

1.The Block Educational Officer,
Block Education Office,
Pollachi South,
Coimbatore District.

2.The Regional Accounts Officer (Audit),
Department of School Education,
Trichy.

3.The Head Master,
Panchayat Union Primary School,
Nachipalayam, Pollachi South,
Coimbatore. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders made in (i) Na.Ka.No.1161/Aa1/2022 dated 24.02.2023 and (ii) Na.Ka.No.1161/Aa1/2022 dated 26.04.2023 passed by the 1st respondent, quash the same and consequently direct the respondents to continue the payment of incentive increment for qualifying B.Sc., (Family and Community Science & Mathematics) and B.Ed., degree.

For Petitioner	: Mr.C.A.Ramanan
For R1	: Mr.V.P.R.Elamparithi, Additional Government Pleader

ORDER

The prayer in the present Writ Petition is to quash the impugned recovery orders dated 24.02.2023 and 26.04.2023 passed by the first respondent with a consequential direction to continue the payment of incentive increments.

2. By stating that the petitioner, who is a Primary School Secondary Grade Teacher, had obtained B.Sc. Degree in Family and Community Science and Mathematics, which subject could not be beneficial to the students between classes 1 and 8, certain audit objections were raised by the second respondent herein. Based on such audit objections, the impugned order dated 24.02.2023 has been passed, cancelling the incentive increment already granted and seeking for recovery of such increments, which have

already been paid for the period between 17.12.2012 and 28.02.2023 totalling a sum of Rs.2,13,184/-. Thereafter, the first respondent, through an order dated 26.04.2023, had ordered for recovery of the additional increments paid to the petitioner. These orders are put under challenge in the present Writ Petition.

3. It is stated by the learned counsel for the petitioner that pursuant to the impugned orders, a sum of Rs.4,750/- have already been recovered in five equal instalments. The learned counsel also submitted that the audit objection itself is baseless, since it has not taken into account that one of the majors in the B.Sc., Degree obtained by the petitioner is Mathematics, which is also a subject for students in Classes 1 to 8 and therefore, the consequential order of recovery cannot be sustained. It is also his submission that prior to passing of the impugned orders, an opportunity was given to the petitioner to raise her objections.

4. Per contra, the learned Additional Government Pleader appearing for the first respondent placed reliance on the averments in the counter affidavit and submitted that as per G.O.Ms.No.324, Education, Science and

Technology Department (E2), dated 25.04.1995, the higher qualification should be with reference to the area of specification instead of in any subject. According to him, since the B.Sc., Degree obtained by the petitioner has integrated both Family and Community Science and Mathematics together, such a subject would not serve any purpose to the children of the primary school children between Classes 1 to 8 and therefore, she is not entitled for the incentive increments.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Insofar as the audit objections raised by the second respondent herein is concerned, no reference has been made with regard to the subject of Mathematics, which is one of the majors in B.Sc., Degree obtained by the petitioner. Merely because the subjects of Family and Community Science has been integrated with Mathematics in the B.Sc., Degree, it cannot be stated that Mathematics subject should not be taken into account. It is sheer common sense that the subject of Mathematics, being a major subject, by itself would enrich a teacher to have possessed additional knowledge of the

subject, which in turn would also be beneficial to the primary school children for the Classes between 1 and 8. The audit objections are not based on any Government Orders, but merely on an assumption by taking into account both the majors consolidatedly. Thus, as rightly pointed out by the learned counsel for the petitioner, the objection itself becomes baseless.

7. Incidentally, in a recent decision, the Division Bench of this Court had dealt with the powers of the Regional Accounts Officer (Audit) in raising audit objections, in the case of ***E.Roseline Lobo and others Vs. S.Maharaja and others*** passed in Rev.Aplc.(MD) No.170 of 2022, dated 28.04.2023, in which, it was specifically held that though the Director of the Audit Department could be well within his powers to conduct audit and raise objections with regard to any illegal payments, any deficiency or loss caused by negligence or misconduct, they would not be empowered to question the administrative decisions exercised by the concerned department.

8. In the instant case, the administrative decision to grant incentive increment has already been exercised by the competent authorities of the Educational Department and obviously, they had taken into account the

Mathematics major subject to be a qualification for grant of incentive increment, which is well within the guidelines issued in G.O.Ms.No.324, dated 25.04.1995. On the contrary, the audit objections raised by the second respondent herein is not based on any regulation or orders of the Government. Thus, the very foundation on which the impugned orders have been passed, becomes baseless and hence, illegal.

9. This apart, it is a well settled proposition of law that whenever any orders are passed, which obviously affects the service of a Government employee, the same should be preceded with a show cause notice calling for the objections of the concerned employee and any subsequent orders passed shall be made only on consideration of the objections received from the employee, if any. In the absence of the same, the order itself would be in violation of the principles of natural justice and hence, illegal.

10. For all the foregoing reasons, the impugned orders passed by the first respondent dated 24.02.2023 and 26.04.2023 are quashed. Consequently, there shall be a direction to the first respondent herein to forthwith pass orders, refunding the amounts already recovered from the petitioner, pursuant

to the impugned orders, and disburse the same to her, within a period of two weeks from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2023

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

To

1.The Block Educational Officer,
Block Education Office,
Pollachi South,
Coimbatore District.

2.The Regional Accounts Officer (Audit),
Department of School Education,
Trichy.

M.S.RAMESH,J.

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