



WEB COPY



W.P.No.22591 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.22591 of 2023
and W.M.P.Nos. 22021 & 22022 of 2023

D.Shanthakumari

... Petitioner

Versus

1.The Secretary to Government
School Education Department
Fort St.George, Chennai – 600 009

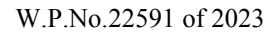
2.The Accountant General
Anna Salai, Teynampet, Chennai - 600 018

3.The Director of Elementary Education
DPI Campus, College Road
Chennai - 600006

4.The Chief Accounts Officer
Directorate of Elementary Education, Chennai

5.The District Educational Officer (Auditing)
Chidambaram, Cuddalore District

6. The District Education Officer
(Elementary Education/Anglo Indian School)
Chennai East, Chennai – 5



8.The Correspondent
St.Peter's Primary School
18, West Madha Church Street
Royapuram, Chennai – 600 013

... Respondents

For Petitioner : Mr.R.S.Anandan
For Respondents : Mr.S. Arumugam for R1 to R7
Government Advocate

This Writ Petition has been filed to quash the proceedings of the 6th respondent in his proceedings Na.Ka.No.91/A3/2022 dated .11.2022 (signed on 18.01.2023) and consequently to direct the 1st and 3rd respondents to disburse the entire service and monetary benefits along with arrears of pension from date of retirement (31.05.2022) with 18 percentage interest and continue to pay regular monthly pension the same.



W.P.No.22591 of 2023

2. It is the case of the Writ Petitioner that she was initially appointed as Secondary Grade Teacher in the 8th respondent school on 13.08.1984 on temporary basis and her service was regularised from 02.02.1985. After appointment, the Petitioner did M.A. in History in December 1996 and acquired B.Ed., in October 1999. As per the G.O.Ms.No.42 dated 19.01.1969, the Government evolved a policy to grant incentive increments to teachers for having acquired higher qualification. As per the above Government Order, a Secondary Grade Teacher is entitled for one incentive increment for B.Ed and one incentive increment for post graduate degree.

3. The Petitioner acquired B.Ed in the year 1999, accordingly she was granted two incentive increments for B.Ed and M.A. respectively. The Petitioner continued to receive the same till she attained superannuation on 31.05.2022. The sixth respondent issued proceedings dated ...11.2022 (signed on 18.01.2023) holding that the audit objection is confirmed in pursuance to the Government Order in G.O.Ms.No.118 dated 10.07.2023 and the increment granted from 15.12.2000 was wrongly given to the Petitioner, hence, she is not entitled and the same should be recovered from



W.P.No.22591 of 2023

the petitioner. In respondent, the Petitioner gave a detailed representation dated 24.01.2023 to the Respondents seeking to rectify/cancel the audit objection and also to disburse the service and monetary benefit, pension and other benefits which is pending without consideration till date. Hence the Writ Petition.

4. The learned Government Advocate submitted that as per the G.O.Ms.No.118 dated 10.07.2013, the benefit given for the P.G And B.Ed degree obtained through Open University System had been cancelled and there is no provision for extension of the benefit of incentive increment to the petitioner. Hence, the incentive has been granted wrongly to the petitioner, orders have been passed to cancel the incentive increment and also to recover the amount paid from the petitioner. The petitioner is already retired on 31.05.2022 and in all these years, the amount has been paid continuously to the petitioner.

5. The learned counsel appearing for the writ petitioner mainly submitted that the Petitioner has received the benefits for more than 20



W.P.No.22591 of 2023

years. Even assuming that the incentives have been paid wrongly, the same cannot be recovered after 20 years.

6. I have perused the entire materials. It is not disputed that the Petitioner was appointed as Secondary Grade teacher in the year 1984. She has acquired Diploma in Teachers Training in the year 1983. After appointment she did M.A. History in December 1996 and acquired B.Ed., in October 1999. Though the G.O.Ms.No.42, Education Department, dated 10.01.1969 provided a policy to grant incentive increments to teachers for having acquired higher qualification, the fact remains that G.O.Ms.No.907, P&AR (FR II) Department dated 17.09.1986 has been specifically stated that higher qualification should be with reference to the the area of specialisation instead of any subject. It is also relevant to note that the Government have issued guidelines in G.O.Ms.No.624 Education (E2) Department dated 13.07.1992 with regard to sanction of incentive increment to teachers. Para 3(iii) of the above Government Order is extracted below:

“iii. In respect of teacher enrolling during 1992-93 and after, sanction of increments shall be restricted to developing areas of



W.P.No.22591 of 2023

study and subjects where teacher shortage has been identified. The Director of School Education will identify the subjects for purposes of incentive increment in which teachers will be encouraged to qualify in consultation with the Government in all future case. The intention is to encourage the teachers to get higher qualification in those specially selected subjects.”

Admittedly, the petitioner is presently working as Secondary Grade Teacher in Elementary School and the syllabus is only, Tamil, English, Maths, Science, Social Science. It is submitted that acquiring higher degree in Commerce subject will not serve any purpose. Hence, the Government order quoted by the petitioner is applicable to the teachers working in High Schools and Higher Secondary Schools. Hence this contention of the petitioner has no merit.”

7. Considering the above Government Order, this Court in W.P.No.14446 of 2017 dated 07.11.2022 (Jothilingam vs. The Director of Elementary Education) has held as follows:



WEB COPY



W.P.No.22591 of 2023

“8. The very scheme of grant of incentive increment is a concession to the Teachers. The concession was granted only to encourage the Teachers to acquire higher educational qualifications for the purpose of imparting better education to the children studying in the School. Incentive increment is not a part of Service Conditions and it is a concession granted only in the event of acquiring higher educational qualifications relevant to the subject, in which, the Teacher is taking class in Schools. Thus, the qualification acquired by a Teacher must be relevant for the purpose of imparting education to the children in the School and irrelevant subjects cannot be considered as a criteria for the purpose of sanctioning incentive increment.”

8. Though the Order in W.P.No.3697 of 2018 dated 25.01.2022 [A.Anthonysamy vs. The District Elementary Educational Officer and another (High Court, Madras)] placed before this Court by the Writ Petitioner that this Court has distinguished the G.O. and directed the payment of increment. On perusal of the above, this Court is of the view that when the G.O. is specific and restricting the sanction of increments developing areas of study and subjects where teachers shortages were



W.P.No.22591 of 2023

identified. As per the above G.O., the 3rd Respondent has to identify the subject for the purpose of incentive increments. In such a view of the matter when the Secondary Grade Teacher acquired degree in any specialised subject as a matter of right he/she cannot seek incentive increments. After all scheme of grant of incentive is a concession to the teachers and such concession is granted only where the teachers obtained higher educational qualification related to the subject which taught in the school where the teacher is working.

9. At the most, the respondents are entitled to cancel the incentive increment of the petitioner only in respect of the pension alone and they are not entitled to cancel the incentive increment retrospectively. In such a view of the matter, order impugned cancelling the incentive increment is sustained. However, the recovery ordered stands quashed. Though the increment has sanctioned wrongly and the same has been paid continuously for more than 5 years to the Petitioner, recovery of incentive increment shall not be permissible in view of the decision of the Supreme Court in ***State Of Punjab & Ors vs Rafiq Masih (White Washer) [(2015) 4 SCC 334]*** wherein it



is held as follows:

WEB COPY

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from 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 outweigh the equitable balance of the employer's right to recover.*



W.P.No.22591 of 2023

10. Such view of the matter the recovery order passed by the respondent stands quashed. The respondents are at liberty to re-look the pension pursuant to the G.O.Ms.No.118 dated 10.07.2023, calculate the same and release the pension deducting increment in the pension papers.

11. Accordingly, the Writ Petition stands disposed of. The impugned order cancelling incentive increment is sustained and the Recovery alone is set aside. It is made clear that the pension papers will be processed within a period of three months from the date of receipt of a copy of this Order. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

01.08.2023

dhk



W.P.No.22591 of 2023

WEB COPY

To

1.The Secretary to Government
School Education Department
Fort St.George, Chennai – 600 009

2.The Accountant General
Anna Salai, Teynampet, Chennai - 600 018

3.The Director of Elementary Education
DPI Campus, College Road
Chennai - 600006

4.The Chief Accounts Officer
Directorate of Elementary Education, Chennai

5.The District Educational Officer (Auditing)
Chidambaram, Cuddalore District

6. The District Education Officer
(Elementary Education/Anglo Indian School)
Chennai East, Chennai – 5

7.The Block Education Officer
Royapuram Circle – II
Arathoon Road, Royapuram, Chennai – 600 013



WEB COPY



W.P.No.22591 of 2023

N.SATHISH KUMAR, J.

dhk

Order in:
W.P.No.22591 of 2023

01.08.2023