



W.P.No.34374 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.34374 of 2019

and

W.M.P.No.35040 of 2019

A.Senthamaraikannan

... Petitioner

Vs.

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The District Educational Officer,
Tindivanam Educational District,
Villupuram District.

3.The Block Educational Officer,
Olakkur Block, Villupuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent in Na.Ka.No.398/A2/2017 dated 12.07.2018 and to quash the same and consequently directing the respondents to restore the incentive increment for P.G. Degree qualification acquired by the



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petitioner and to refund the recovered amount of Rs.5,74,644/- to the petitioner with all consequential payment of arrears of salary and retirement benefits including the pension.

For Petitioner : Mr. S.Nedunchezhiyan

For Respondents : Mr. T.S.Rajangam
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Na.Ka.No.398/A2/2017 dated 12.07.2018 of the third respondent and consequently to direct the respondents to restore the incentive increment granted to the petitioner with all consequential payment of arrears of salary and retirement benefits, including pension.

2. The petitioner's case is that he acquired his P.G Degree through Open University in the year 1994 and consequently B.Ed Degree in the year 1996. The petitioner was sanctioned incentive increment as per the proceedings of the third respondent dated 06.07.2004 with effect from 15.12.2000. Consequently, several orders came to be passed regarding the very same issue of sanctioning incentive increments for P.G Degree holders.



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3. The further case of the petitioner is that Government Orders have also been duly implemented throughout the State of Tamil Nadu and all teachers have been granted the increments. However, the third respondent/Block Educational Officer, Olakkur Block, Villupuram District, issued proceedings dated 20.11.2017, citing audit objections for the payment of incentive increments and referring to G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013 and further relying on the fact that G.O.Ms.No.307, School Education (E2) Department dated 15.12.2000 stood cancelled.

4. The petitioner was called upon to remit the increments, which were already received by him. The petitioner submitted his explanation on 07.12.2017 stating that the increment was given only based on G.O.Ms.No.307, School Education (E2) Department dated 15.12.2000 and the audit objections of the year 2013 cannot be put against the petitioner and he be called upon to remit the excess amounts allegedly paid to him.



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5. Despite the explanation offered by the writ petitioner, the third respondent passed the impugned order on 12.07.2018, ordering revision of scale of pay by cancelling the incentive increments granted to the petitioner and also revision of scale of pay with further direction to remit the required amounts to the Government accounts immediately. This order is challenged by the writ petitioner on the ground that it is arbitrary and illegal and violation of principles of natural justice.

6. The third respondent has filed a counter affidavit setting out the trajectory in the matter of sanctioning of incentive increment, finally culminating in G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013 and justified the impugned order passed. The third respondent also contended that the incentive increments sanctioned to all teachers as per G.O.Ms.No.307, School Education (E2) Department dated 15.12.2000 were revised and therefore, the action of the respondents has been fair and uniform and it does not call for any interference by way of issuance of Writ .



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WEB COPY 7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

8. At the outset, it is seen that G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013, applies prospectively and not retrospectively.

9. In fact, this Court, in W.P.No.12744 of 1998 dated 25.08.2003, found that W.P.No.12912 of 1999 dated 09.12.2002 dealt with the very same issue pertaining to G.O.Ms.No.307, School Education (E2) Department dated 15.12.2000 and held that there is no justification to deny the benefits to the persons, who were already recognized by the Government and sanctioned the necessary incentives.

10. No differential approach can be adopted between the Degrees issued by the University recognized by the State Government and the University Grants Commission (UGC).



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11. The Court also held that once the benefits had been granted by the Government and the amount has been disbursed, even assuming that it was erroneous, the Government was estopped from recovering the amount that was already disbursed to the petitioner. This order was subsequently followed by two other learned single judges.

12. The issue involved in the present case is identical to the issue that has been decided by this Court earlier and this Court has no reason to take a different view.

13. Admittedly, the Government chose to confer the benefits on the petitioner and subsequently, it is not open to them to recall the said benefits that too by giving a retrospective operation to G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013. Therefore, the writ petitioner is entitled to the relief in this Court.

14. Hence, this Writ Petition is allowed as prayed for. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.



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15. It is brought to the notice of this Court that the petitioner herein has retired from services and the amounts have already been recovered from him. As this Court has found that the Government is not entitled to recover the amounts paid to the petitioner, the respondents are directed to refund the said amounts to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

16.06.2023
(3/3)

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes / No

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To

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
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P.B.BALAJI, J.

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