



WP(MD)Nos.424 of 2020, etc., batch

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP(MD)Nos.424, 8691, 11817 of 2020;
1534, 4514, 5640, 6136, 6161, 9510 to 9514,
10388, 11487, 14853 to 14859 of 2021
and**

**WMP(MD)Nos.331, 8021, 10227 of 2020;
1314, 3622, 4476, 4769, 4788, 7238 to 7247, 7479, 7480, 7482,
7669, 7688, 7943, 8076, 9021, 10462, 11294, 11761, 11762,
11764 to 11767, 11769, 12678, 14948, 14950 to 14952,
14954, 14956, 14957 of 2021**

WP(MD)No.424 of 2020:

M.Anbu Kulandai Raj

: Petitioner

Vs.

1.The Director of Elementary School,
DPI Complex, College Road,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Dindigul District.

3.The Block Educational Officer II,
Sanarpatty Union,
Dindigul District.

: Respondents



WP(MD)Nos.424 of 2020, etc., batch

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No. 933/A1/2019, dated 16.09.2019 and quash the same as illegal and consequently, directing the respondents to pay the B.Ed., incentive increment as sanctioned to the petitioner vide Na.Ka.No.91/A1/09, dated 03.04.2009.

For Petitioner : Mr.A.Arul Jenifer

For Respondents : Mr.J.Ashok,
Additional Government Pleader

COMMON ORDER

The petitioners are either having B.Lit., or B.A. (Tamil) degree and based on the same, they were promoted as Middle School Headmaster / Headmistress. After such appointment, they have obtained B.Ed degree and applied for incentive increments, stating that they have obtained additional qualification. Accordingly, they were provided with incentive increments. The Department has now ordered for recovering the incentive increments holding that B.Ed degree is the basic qualification for a Middle School Headmaster and that it cannot be termed as an additional qualification, based on which, incentive increments could not be provided. Challenging the same, the petitioners have moved this Court.



WEB COPY

2.Sum and substance of the submissions made by the learned Counsel for the petitioners are as follows:-

2.1.The petitioners are eligible for incentive increments for B.Ed degree, as per the following government orders:-

- i) G.O.Ms.No.42, Education Department, dated 10.01.1969;
- ii) G.O.Ms.No.1032, Education Department, dated 22.06.1971;
- iii) G.O.Ms.No.107, Education Department, dated 20.01.1976;
- iv) G.O.Ms.No.1023, Education, Science & Technology Department, dated 09.12.1993;
- v) G.O.Ms.No.1024, Education, Science and Technology Department, dated 09.12.1993; and
- vi) G.O.Ms.No.286, Finance Department, dated 28.08.2018.

2.2.As per Rule 6(b)(i) of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service, a person with any degree is eligible for the post of Middle School Headmaster, by promotion. Therefore, the B.Ed degree obtained by the petitioners is an additional qualification and there is no fraud or misrepresentation committed by the petitioners.



WEB COPY

2.3.The Director of Elementary Education vide proceedings in Oo.Mu.No. 15623 B19/90, dated 07.06.1991, has clarified that Middle School Headmasters are entitled for incentive increments for acquiring B.Ed degree.

2.4.The following decisions were relied upon by the petitioners in support of their contention:-

- i) ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others***, reported in ***(2015) 4 SCC 334***;
- ii) ***Sahim Ram v. State of Haryana and Others***, reported in ***1995 Supp (1) SCC 18***;
- iii) ***Syed Abdul Qadir v. State of Bihar***, reported in ***(2009) 3 SCC 475***.

3.Countering the arguments advanced by the petitioners' Counsel, the learned Additional Government Pleader appearing for the official respondents made his submissions as follows:-

3.1.As per Rule 6(b)(i) of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service, qualification for a person to be appointed as Middle School Headmaster is any degree with B.Ed. Therefore, B.Ed degree is one



of the basic qualifications for the post of Middle School Headmaster and not an additional qualification. Therefore, incentive increments could not be granted.

3.2.The Government by letter in No.3702/EE1(2)/2017, dated 10.10.2017, has clarified that the Teachers who have acquired B.Ed degree, after having been promoted as Middle School Headmasters based on B.Lit. (Tamil), are not entitled for any incentive increment for the B.Ed degree. However, incentive increments were given to the petitioners on misrepresentation and therefore, it needs to be recovered, since it is causing loss to the public exchequer.

3.3.He has also relied upon the following decisions in support of his case:-

- i) *Shyam Babu Verma v. Union of India*, reported in **(1994) 2 SCC 521**;
- ii) *V.Gangaram v. Regional Joint Director and Others*, reported in **AIR 1997 SC 2776**;

3.4.Taking cue from the decision of the Patna High Court in ***Ram Binod Singh v. Bihar State Electricity Board and Others***, reported in **MANU/BH/0437/2007**, he submitted that even if there is no misrepresentation or fraud on the part of the employee, the employer can still order for recovery.



WEB COPY

3.5.The Government Order in G.O.Ms.No.107, Education Department, dated 20.01.1976 is with regard to Tamil Pandits and as per this order, there cannot be two incentive increments. Further as per G.O.Ms.No.1297, School Education Department, dated 21.07.1979, qualification for promotion to the post of Middle School Headmaster is Undergraduate degree with B.Ed. Therefore, B.Ed qualification for the post of Middle School Headmaster cannot be considered as additional qualification.

4.This Court paid it's anxious consideration to the rival submissions made by the respective parties and also perused the available materials.

5.In **Rafiq Masih's (White Washer)** case supra, the Hon'ble Supreme Court has held as follows:-

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



(i) *Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*

(ii) *Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*

(iii) *Recovery from the 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.”*

6. Referring to the decision in **Rafiq Masih's** case (supra), the Hon'ble Supreme Court in **High Court of Punjab and Haryana and Others v. Jagdev Singh**, reported in (2016) 14 SCC 267, has held as follows:-

“11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess



would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

7. In **Syed Abdul Qadir's** case (supra), the Hon'ble Supreme Court has held as follows:-

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”



8. In **Ram Binod Singh's** case (supra), the Patna High Court has held as follows:-

“26. The relevant provisions of the Indian Contract Act, particularly Section 72 cover cases of mistake of fact as well as law and provide for recovery. The principle of restitution in case of unjust enrichment is also an accepted principle for ensuring justice in appropriate case. Hence, in law, the position appears to be clear that there is no legal bar in ordering for recovery from retired employees where they have received money benefits on account of mistake at the ministerial level in the matter of fixation of pay, grant of increments or time bound promotion when the conditions precedent for such promotions were clearly non est. However, it has been correctly submitted on behalf of the petitioners that the theory of simple mistake or error to justify recovery will not hold good where the grant did not suffer from patent illegality or perversity so as to attract the Wednesbury Principle or the vice of mala fide in law. For example, where two interpretations of a provision were possible and one was consciously approved and adopted by the competent authority meant to be applied generally to all concerned, any error in such decision of the competent authority if corrected at a later stage may be ordered to apply only prospectively. Moreover, if the decision has been followed for many years. In other words, if on reinterpretation or adjudication the earlier view permitting the grant of monetary benefits is found to be by a competent authority and bona fide but wrong, mistaken or erroneous,



then ordinarily no recovery should be made unless the excess payment already made is covered by the two exceptions pointed out in the case of Madan Mohan Prasad (supra). But if the grant was by way of undue favour, arbitrary, malafide, ultra vires and or void ab initio, recovery of public money should be the normal course. In such cases of clear disobedience of policy or rules by ministerial action or clear dishonest decision causing undue loss to public money, action against the concerned authority may also be justified to prevent and discourage plunder of public money by sheer disregard of clear law. The constitutional schemes of rule of law and fairness in public action support recovery in such cases unless law of limitation or waiver etc. are successfully invoked to show that they prevent such a course in the facts of any particular case.”

9. In **Chandi Prasad Uniyal and Others v. State of Uttarakhand and Others**, reported in **(2012) 8 SCC 417**, the Hon'ble Supreme Court has held as follows:-

“13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances



of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as “taxpayers' money” which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case [(2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] and in Col. B.J. Akkara case [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , the excess payment made due to



wrong/irregular pay fixation can always be recovered.

16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order that the excess payment made be recovered from the appellant's salary in twelve equal monthly instalments starting from October 2012.”

10. In **Col. B.J. Akkara (Retd.) v. Government of India and Others**, reported in **(2006) 11 SCC 709**, the Hon'ble Supreme Court has held as follows:-

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments / allowances from an employee, if the following conditions are fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is



subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the



respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

11. This Court in ***M.Kandan v. Indian Bank and Others***, reported in **2018 SCC OnLine Mad 6231**, has held as follows:-

“6. It requires to be pointed out here that the aforesaid decision passed by the Two Judges Bench of the Hon'ble Supreme Court of India, relied by the learned Counsel for the Petitioner, is a consequential order to the earlier order passed by a Three Judges Bench of the Hon'ble Supreme Court of India in the same case in State of Punjab v. Rafiq Masih (White Washer) [(2014) 8 SCC 883], in which it has been ruled that there is no principle that any excess payment to employees could not be recovered and the earlier decisions in Registrar of Co-operative Societies, Haryana v. Israil Khan [(2010) 1 SCC 440] and Chandi Prasad Uniyal v. State of Uttarakhand [(2012) 8 SCC 417], supporting that view have been approved. It has also been explained therein that directions issued by the Hon'ble Apex Court in the exercise of powers under Article 142 of the Constitution, relaxing the application of law, was in view of the peculiar circumstances which do not comprise



the ratio decidendi and therefore, do not make binding precedent.

Viewed from that perspective, it can be seen that the subsequent judgment in State of Punjab v. Rafiq Masih (White Washer) [(2015) 4 SCC 334], were only containing illustrations where the Court had exercised its power under Article 142 of the Constitution and the same could not be taken as any ratio decidendi unconditionally exempting recovery from retired persons from the rigour of the law recognised in Section 72 of the Indian Contract Act, 1872, that a person to whom money has been paid by mistake must repay it.

7. In the light of the aforesaid legal position, it could be seen that the excess payment made to the Petitioner was brought to his notice as early as 20.04.1985 and was sought to be recovered, but in view of the Writ Petitions filed by the Petitioner challenging the aforesaid recovery in W.P. Nos. 4476 of 1985 and 5311 of 1995, in which interim orders of stay had been passed, the Respondent was unable to effect the recovery. This disablement caused to the Respondent at the instance of the Petitioner, cannot lead to absurd consequences of depriving the Respondent of its right to recover the excess payment from the terminal benefits of the Petitioner, who had voluntarily retired from service, before the earlier litigation had come to an end on the species plea of hardship caused.”

12. Keeping these principles in mind, this Court proceeded with the batch of writ petitions.



WEB COPY

13.The writ petitioners, who have been granted incentive increments for possessing higher qualifications, are now facing recovery proceedings on the ground that the incentive increments have been provided wrongly to them.

14.According to the petitioners, they have acquired additional qualification and as such, they are eligible for the incentive increments. It is their further claim that there is no misrepresentation on their part and even assuming that the incentive increments have been wrongly provided, the same cannot now be recovered, because the increments were provided more than five years back.

15.The respondents claim that the petitioners have obtained the incentive increments either on misrepresentation or by fraud with the connivance of some of the officials. It is their further claim that when the benefit was obtained by playing fraud, they can recover the same.

16.The very basis for grant of incentive increment is to encourage the Teachers to acquire additional qualification, which would be useful for the students and for the improvement of the education system. The Government, by



WP(MD)Nos.424 of 2020, etc., batch

issuing various government orders, has provided incentive increments to the Teachers, based on the additional qualifications acquired by them, viz., B.Lit., B.A., M.A., M.Ed., etc. In fact, some of the Teachers were provided upto three incentive increments, but, now the maximum number of incentive increments has been restricted as two in their total service period, as per the Government Order in G.O.(1D)No.18, School Education Department, dated 18.01.2013.

17. According to Black's Law Dictionary, incentive pay plan is defined as compensation plan, in which increased productivity is rewarded with higher pay. It is a concession granted by the Government to motivate the Teachers. Thus, such concession can never be claimed as an absolute right and it is to be granted strictly in accordance with the terms and conditions. Wrong sanctioning of incentive increment to any Teacher cannot be treated as precedent, nor it can be sustained.

18. Rule 6(b)(i) of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service deals with the qualification for a person to be appointed as Middle School Headmaster and the same is extracted as under:-

“a degree of any University in the State or a degree of equivalent standard and B.T. or B.Ed. degree of any University in the State”



WP(MD)Nos.424 of 2020, etc., batch

WEB COPY

19.From the above, it is clear that one of the qualifications for a person to be appointed as a Middle School Headmaster is any degree with B.T or B.Ed degree. The petitioners, who have been appointed as Secondary Grade Teachers based on their degrees, have been promoted as Middle School Headmasters and thereafter, they have acquired B.Ed., qualification. Therefore, they have provided with incentive increments for B.Ed degree also, as if it is an additional qualification. However, B.Ed degree is also one of the qualifications for promotion to the post of Middle School Headmaster. Therefore, the petitioners, who have availed the benefit of Middle School Headmaster, cannot now claim it as a matter of right for incentive increment for their additional qualification of B.Ed.

20.Moreover, the Government has now realized that the incentive increments provided to the Teachers have not effected any results in the performance of the Students and has taken a policy decision not to provide any incentive increments hereafter, based on the additional qualifications acquired by the Teachers, vide G.O.Ms.No.116, Personnel and Administrative Reforms (FR-IV) Department, dated 15.10.2020. However, the incentive increments, which were provided already are not disturbed.



WEB COPY

21. An incentive must be a reward to encourage a worker, who is performing better than the others. It must be depending upon the performance and not on possession of any degree alone. A Secondary Grade Teacher, who obtained a M.A. Degree in Economics is provided with an incentive increment without noticing as to how he is going to transform his knowledge of M.A (Economics) to the Students who are studying upto fifth standard. This would lead to a situation where a Teacher who does not perform, but possess / obtain degrees is provided with incentive increments, whereas, on the other hand, a Teacher who is diligently discharging his duty with his performance and providing good results are not provided with any incentive increments. The incentive increments provided without assessing their performance / results would certainly demoralize the persons who are discharging their duty diligently.

22. The Sixth Central Pay Commission, in its report in the year 2008, has observed as follows:-

“2.5.2. Performance for the Government is usually not measured in terms of profit, but in terms of achieving societal goals and desired outcomes, for example, reduction of crime, enhancing the quality of life, reducing infant mortality etc. Performance is effective service delivery



and responsiveness to stakeholders. In the Governmental context, performance can be defined as the ability of the Government to acquire resources and to put these resources to their most efficient use (input-output relationship) and to achieve the desired outputs and outcome goals (output-outcome relationship).”

23.The Pay Commission had also engaged the Indian Institute of Management [IIM(A)] to do a study on Formulating the Concept, Principles and Parameters for Performance-Related Incentive Schemes in Government. The Synthesis Report of studies has observed as follows:-

“In India, Government employees are paid according to their service – incremental salary scales. For a larger (majority) section of employees there is hardly any performance for pay incentive available to them. Their salaries are today only a composite of basic pay plus certain allowances (variable) including DA that are admissible depending on the nature of jobs and duties and accompanying working conditions. In fact, natural increases in salary are very much guaranteed to Government employees. This leads to a situation where employees do not exert themselves for a higher level of on-the-job performance and achievements, thus depriving the Government of potential productivity gains and service delivery enhancements, both in terms of quantum and quality. There is no external motivation for risk-taking and delivering a higher level of performance, because through



the risk-taking is punished if things go wrong, it is not financially rewarded if things improve because of employees' initiative and risk-taking. Over the years, this has led to the development of a culture where employees have become risk averse.”

24.In fact, as early as in the year 2008, the Government has constituted Administrative Reforms Committee under the chairmanship of Dr.Justice A.K.Rajan, Retired Judge of Madras High Court, for making recommendations to ensure an effective and corruptive free governance. The Committee had also made its recommendations, followed by which, the Government has passed G.O.Ms.No. 24, Personnel and Administrative Reforms (AR-I) Department, dated 17.02.2010, accepting certain recommendations. One such recommendation was that award should be given for good performance and the Government has directed the respective Heads of Departments to pass appropriate orders in this regard.

25.Since the Government has now taken a policy decision not to provide any incentive increments in future, based on qualifications alone, this Court feels that the Government ought to ensure how the Teachers who are already receiving such incentive increments based on their qualifications are transforming their knowledge to the Students.



WEB COPY

26. Insofar as the present cases are concerned, for the foregoing reasonings, this Court holds that the petitioners are not entitled for incentive increments for the B.Ed degree. Insofar as the orders of recovery are concerned, this Court, taking note of the decisions referred supra and the fact that the incentive increments for B.Ed degree were granted for more than five years, is passing the following directions:-

i) if the incentive increments were obtained by misrepresentation, the same is to be recovered;

ii) if the incentive increments were obtained by playing fraud with the connivance of the officials, the same is to be recovered;

iii) at the time of obtaining the incentive increments, if the petitioners gave an undertaking that the incentive increments can be recovered in future if they are found to be not eligible, then the same is to be recovered;

iv) if the petitioners do not fall in any of the above categories, then there cannot be any recovery as against them;

v) if the officials have, knowingly or unknowingly, allowed the petitioners to receive the incentive increments for more than five years, necessary action has to be taken as against those responsible;



WP(MD)Nos.424 of 2020, etc., batch

WEB COPY

27. Insofar as the Teachers who are receiving incentive increments for their additional qualification are concerned, the Government is expected to ensure that such Teachers are out-performing than those who are not having the additional qualification and that the incentive increments are reviewed periodically based on their performance.

With the above observations and directions, all the writ petitions stand disposed of. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions stand closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

24.02.2023

To

1. The Director of Elementary School,
DPI Complex, College Road,
Chennai - 600 006.
2. The District Elementary Educational Officer,
Dindigul District.
3. The Block Educational Officer II,
Sanarpatty Union, Dindigul District.



WEB COPY



WP(MD)Nos.424 of 2020, etc., batch

B.PUGALENDHI, J.

gk

**WP(MD)Nos.424, 8691, 11817 of 2020;
1534, 4514, 5640, 6136, 6161, 9510 to 9514,
10388, 11487, 14853 to 14859 of 2021**

24.02.2023