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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.10.2023**

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)No.1731 of 2023
and
C.M.P.(MD)No.13259 of 2023

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

2.The District Elementary Educational Officer,
Thoothukudi District, Thoothukudi.

3.The Assistant Elementary Educational Officer,
Ottapidaram – 628 401,
Thoothukudi District.

...Appellant

-Vs.-

1.S.Kulanthai Theres

2.The Correspondent,
CMML Middle School,
Naraikkinar, Thoothukudi District.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 22.11.2021 made in W.P.(MD)No.7714 of 2013
on the file of this Court.



For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For Respondents : Mr.A.Thirumurthy

JUDGMENT

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The Writ Appeal has been instituted against the order dated 22.11.2021 setting aside the audit objection raised by the department regarding grant of incentive increment to the Writ Petitioner, who is holding the post of Secondary Grade Teacher.

2.It is not in dispute that the Secondary Grade Teachers are eligible to draw incentive increment with terms and conditions stipulated in the Government scheme for grant of increment.

3.The learned Additional Government Pleader made a submission that the Writ Petitioner may be eligible to draw incentive increment for possessing additional qualification of M.A., M.Sc., and M.Ed., but certainly, not entitled to receive increment for both the qualifications. More so, the Writ Petitioner was appointed as Graduate Teacher for which, B.Sc., and B.Ed., are essential qualifications.



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4. Audit party raised an objection stating that an excessive increment was granted in violation of the Government scheme. The learned Single Judge allowed the Writ Petition mainly on the ground that audit objection is wrong and no further orders are passed enabling the Writ Petitioner to defend his case.

5. We do not find any reason to interfere with the audit objection, but the procedures followed by the appellants are not in consonance with the established principles. Any order, affecting the service rights of an employee, is to be passed only after affording opportunity to such an employee. In the present case, directly based on the audit objection, recovery has been commenced and that being the factum, we are of the opinion that the competent authority has to issue a show cause notice setting out the details and reasons for audit objections or about grant of incentive increment and on receipt of explanation, if any, from the employee, final order is to be passed on merits and in accordance with law.



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6.Since the procedure contemplated had not been followed in this case, the order passed by the learned Single Judge in W.P.(MD)No. 7714 of 2013 dated 22.11.2021 is set aside and the matter is remanded back to the second respondent for issuing show cause notice to the first respondent and on receipt of explanation, pass final orders on merits and in accordance with law as expeditiously as possible.

7.Accordingly, this Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] & [V.L.N.J.]
03.10.2023

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

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S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

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