



W.P.(MD).No.23664 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.07.2023

PRONOUNCED ON : 18.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.23664 of 2022

and

W.M.P(MD)No.17750 of 2022

P.Indra

... Petitioner

Vs.

1.The Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009.

2.The Regional Accounts Officer,
Office of the Regional Accounts Office,
School Education Department,
Madurai – 625 002.

3.The Headmaster,
T.A.S Government Higher Secondary School,
Meesalur – 626 003,
Virudhunagar District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent i.e., No.202/A1/2022, dated 09.09.2022 of the Headmaster, T.A.S Government Higher Secondary



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School, Meesalur and quash the same and consequently direct the third respondent i.e., the Headmaster, T.A.S Government Higher Secondary School, Meesalur not to effect any recovery even it if is a mistaken payment and also direct the first respondent i.e., the Principal Secretary to Government, School Education Department, Chennai to decide whether the sanction of incentive increment to the petitioner for passing P.G. Diploma in Yoga is correct or not as per G.O(Perm)No.177, School Education Department, dated 13.10.2016.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present Writ Petition has been filed to quash the impugned order of the third respondent/the Headmaster, T.A.S Government Higher Secondary School, Meesalur, dated 09.09.2022 and consequently to direct the third respondent i.e., the Headmaster, T.A.S Government Higher Secondary School, Meesalur not to effect any recovery even it if is a mistaken payment and also direct the first respondent i.e., the Principal Secretary to Government, School Education Department, Chennai to decide whether the sanction of incentive increment to the petitioner for passing P.G. Diploma in Yoga is correct or not as per G.O(Perm)No.177, School Education Department, dated 13.10.2016.



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2.The petitioner is presently serving as a Physical Education Teacher in the cadre of Secondary Grade Teacher in T.A.S Government Higher Secondary School, Meesalur, Virudhunagar District. The petitioner joined duty on 02.07.1998 and he is continuing in service till date. The petitioner was granted with an incentive increment for the acquisition of P.G Diploma in Yoga as per the proceedings of the third respondent/the Headmaster, T.A.S Government Higher Secondary School, Meesalur, based on G.O. (Perm)No.177, School Education Department, dated 13.10.2016. However, suddenly, without any notice, the third respondent vide letter, dated 09.09.2022, which is impugned herein in this Writ Petition, directed the petitioner to remit the entire sum received towards incentive increment as per the proceedings, dated 03.07.2018 in one instalment within a period of two months. The petitioner was not put to prior notice before passing of the impugned order. So far, the amount received by the petitioner towards incentive increment would come to Rs.2,70,000/-. The reference made in the said impugned order would reveal that the orders sanctioning incentive increment in proceedings No.44/2018, dated 03.07.2018, came to be cancelled by the Regional Accounts Officer, School Education



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Department, Madurai, dated 02.12.2020. But the said proceedings of the second respondent/the Regional Accounts Officer, dated 02.12.2020 has not been enclosed along with the impugned order. It is needless to say that the non-furnishing of the proceedings of the second respondent referred to in the impugned order has resulted in keeping the petitioner in the dark as to the reason for cancelling the incentive increment which was sanctioned in her favour. Challenging the same, this Writ Petition came to be filed.

3.Heard the rival contentions of both parties and anxiously perused the materials available on record.

4.It is the contention of the learned counsel appearing for the petitioner that it is a settled issue that even if the incentive increment sanctioned to the petitioner is not correct and even if it is a mistake of the Department, then the employee is not responsible for such mistakes and on that basis, recoveries cannot be made as per the precedent made by the Honourable Supreme Court of India in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, wherein, a similar issue has been categorically discussed in which monetary benefits were



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given to the employees in excess of their entitlement due to an unintentional mistake committed by the concerned competent authority in determining the emoluments payable to them has been dealt with, wherein it has been categorically held that the employees were not guilty of furnishing any incorrect information/misrepresentation/fraud which has led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The employees were their employers in the wrongful determination of their inflated emoluments. Hence, the Honourable Supreme Court observed that 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 and hence summarize 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.



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(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."

5.In view of the said directions given by the Honourable Apex Court, the Government accepting the said recommendations notified G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 in consonance with the said Supreme Court order.

6.In view of the law declared by the Courts, the Government made the following directions as detailed below:-



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“(i) In all cases where the excess payments on account of wrong pay /pension / family pension fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice, immediate corrective action must be taken.

(ii) In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee / pensioner / family pensioner informing him/her of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee / pensioner / family pensioner to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee / pensioner / family pensioner.

(iii) Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees / pensioners / family pensioners who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.



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(iv) Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships as detailed in para-3 above. No waiver of recovery may be allowed without the approval of Finance Department.

(v) While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary to Government in the Administrative Department of Secretariat, in consultation with the Finance Department.

(vi) Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc, interest would continue to be recovered from the employee as done hitherto".

7.Per contra, the learned Government Advocate appearing for the respondents submitted that the object of granting incentive increment for additional qualification to teachers is with a noble idea that such acquisition of higher qualification by the Teachers would be of great help to the School students while imparting education to



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them. The very concept of incentive increment had been introduced by the Government of Tamil Nadu to encourage the morale of the Teachers to acquire higher qualifications and utilize the knowledge, they acquired through higher education for the purpose of developing the educational system and the quality of teaching. Incentive increment is a special scheme and a concession provided to the School Teachers for the purpose of encouraging them to teach the students in a better manner. Incentive increment is not part and parcel of the pay rules in force. It is a special benefit granted to the Teachers in order to encourage them. Such a concession is to be regulated in accordance with the terms and conditions of the Government orders. A concession can never be claimed as a matter of right. A Concession is a concept, which is to be granted by the State only on certain special circumstances and in order to boost the morale of the teaching faculties in the Education Department. Thus, the claim of incentive increment can never be a legal right in normal circumstances. The principle to be followed is that uniform implementation of such schemes is mandatory and imminent.



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8.The learned Government Advocate further submitted that originally writ petitioner was sanctioned with incentive increment for the additional qualification P.G. Diploma in Yoga acquired by her vide proceedings dated 03.07.2018. During the annual audit, second respondent vide proceedings dated 02.12.2020 categorically held that as per said G.O.(Prem).No.177, School Education Department, dated 13.10.2016 Physical Education Teacher must undergo B.T or B.Ed or B.PED or BPES or BMS for which first incentive increment should be provided and if a person possesses any one of the above said qualifications and if he undergoes P.G. Diploma in Yoga after getting prior permission then he/she would be eligible to get a second incentive increment for the same. But in the present case writ petitioner without undergoing any one of under graduation prescribed in the said G.O. had directly undergone P.G. Diploma in Yoga, hence the course undergone by the writ petitioner cannot be treated as a valid one for granting incentive increment under said G.O. Pursuant to audit objections raised by the second respondent order of recovery was issued by the third respondent on the ground that the incentive increment granted to the writ petitioner is not in consonance with G.O. (Prem).No.177, School Education Department, dated 13.10.2016 under which incentive increment was originally granted to the writ



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petitioner. Hence, the impugned order of cancelling the incentive increment wrongly extended to the writ petitioner does not warrant any interference.

9.It is pertinent to mention here that the third respondent while permitting payment of incentive increment vide order, dated 03.07.2018 has committed a mistake by not considering the fact mandated by the Government Order in G.O.(Perm)No.177, School Education Department, dated 13.10.2016, which mandates first incentive increment should be provided for undergoing B.T or B.Ed or B.PED or BPES or BMS and only thereafter, if the persons possessing any one of the said qualifications undergoes P.G Diploma in Yoga that too after getting prior permission then the said candidate is entitled to the second incentive increment. But, this is a peculiar case, where the third respondent permitted incentive increment for possessing the qualification of P.G Diploma in Yoga without undergoing B.T or B.Ed or B.PED or BPES or BMS and by oversight, the third respondent had permitted the petitioner to receive an incentive increment for the said qualification, which is not in consonance with the mandates of the said G.O. Hence, it is certain that the petitioner is not entitled to any



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incentive increment for the said qualification acquired by her. However, as far as the impugned order dated 09.09.2022 of the third respondent cancelling the incentive increment and consequently directing the petitioner to remit an amount of Rs.2,70,000/- in one instalment within a period of two months without notice or without giving any opportunity of hearing to the petitioner is bad in the eye of law.

10. Moreover, when the Government itself in consonance with various guidelines made by the Supreme Court in **White Washer's Case (cited supra)** has implemented G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 wherein, it has been mandated that recovery from employees belonging to Clause III and Class IV Service (or Group C and Group D service) is impermissible in law and the petitioner, in this case, would fall under the category of Group 'C' service. In furtherance to that, the said G.O mandates whenever an excess payment on account of wrong calculation has been identified and whenever the authorities decided to rectify an incorrect order, a show cause notice may be issued to the concerned employee informing him/her of the decision to rectify the order which has resulted in the overpayment and the intention to recover such excess payments. However, that exercise has not been done by the



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third respondent in this case and without giving an opportunity of hearing and without any show-cause notice, the petitioner's incentive increment which was earlier granted was unilaterally cancelled vide impugned order, dated 09.09.2022. Though the said exercise would amount to a violation of principles of natural justice, since the said order is in consonance with G.O.(Perm)No.177, School Education Department, dated 13.10.2016, this Court is not inclined to interfere with the impugned order passed by the third respondent, dated 09.09.2022. However, this Court is conscious to direct the third respondent School not to effect any recovery despite the payment has been made mistakenly overlooking the various mandates of the said G.O.(Perm)No.177, School Education Department, dated 13.10.2016.

11.In the light of the order passed by the Honourable Supreme Court of India in **White Washer's case** (cited supra) and in view of the consequential G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 notified by Finance (Pension) Department on 28.08.2018 and also considering the factum that the petitioner is a Group 'C' employee, this Court directs the third respondent not to effect any recovery as aforesaid already sanctioned incentive increment is concerned.



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12. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes
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To

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Secretariat,
Chennai – 600 009.
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Office of the Regional Accounts Office,
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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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