



W.P.(MD) No.5909 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.(MD) No.5909 of 2017

and

W.M.P.(MD) Nos.4682 and 10231 of 2017

A.Thiru Kumaran

.. Petitioner

Vs.

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
- 2.The Director of School Education,
Office of the Director of School Education,
Chennai-6.
- 3.The Chief Educational Officer,
Pudhukottai District, Pudhukottai.
- 4.The Zonal Accounts Officer (Audits),
School Education Department,
Madurai-2.
- 5.The Headmaster,
Government Higher Secondary School,
Kallakottai, Gandarvakottai Taluk,
Pudhukottai District.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the 2nd respondent in his proceedings in Na.Ka.No.42026/H/E2/2016 dated 11.06.2016 and consequential order passed by the 5th respondent in his proceedings in Na.Ka.No.06/2017 dated 11.01.2017 and quash the same as illegal, arbitrary and violation of principles of law.

For Petitioner : Mr.M.Jothi Basu

For Respondents : Mr.V.Nirmal Kumar
Government Advocate

ORDER

Heard Mr.M.Jothi Basu, learned counsel for the petitioner and Mr.V.Nirmal Kumar, learned Government Advocate for the respondents.

2. The challenge in this matter is the order of recovery dated 11.01.2017. The petitioner was appointed as a Graduate Teacher in Government Higher Secondary School, Veeralimalai, Pudhukottai District. In the year 2008-2009, the petitioner got permission from the 5th respondent to study M.Phil degree. On the basis of the same, the 5th respondent revised the pay scale of the petitioner and granted second incentive, which was subsequently approved by the 3rd respondent. While



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this is so, it appears that the State had issued a Letter bearing No.129, dated 17.07.2013, prescribing a cut off date for the award of incentive relating to M.Phil., degree as 18.01.2013. In fact, a Government Order issued prior thereto in G.O.(ID).No.18, dated 18.01.2013 did not prescribe any cut off date to fix the entitlement for receipt of incentive and the letter dated 17.07.2013 had been issued as a clarification thereto.

3. Thus, as a consequent of clarification dated 17.07.2013, the impugned order has come to be passed on the date as aforesaid seeking recovery of the incentive granted earlier.

4. Straight away the impugned order is liable to be quashed on the strength of the directions issued in the case of ***State of Punjab and others etc., vs. Rafiq Masih (White Washer) etc.,*** reported in (2015) 4 ***SCC 334***. At Paragraph No.12 thereof, the Hon'ble Supreme Court prescribed the following directions:

“12. 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 employers right to recover.”



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5. One of the guidelines, as relevant to the present case, is that no recovery to be initiated beyond the period of five years from the allegedly offending event. In the present case, the incentive has been awarded as early as in 2008, whereas the impugned order has been passed only in 2017, based on a clarification issued in 2013. Thus, the order is far beyond the time limit as prescribed and thus fails.

6. As the petitioner restricts his prayer to challenge to the recovery order dated 11.01.2017 only, the order of recovery dated 11.01.2017 alone is quashed.

7.1. Accordingly, this Writ Petition is allowed.

7.2. No costs.

7.3. Consequently, connected Miscellaneous Petitions are closed.

17.08.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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To

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