



W.P.(MD) No.12772 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 04.08.2023

ORDERS PRONOUNCED ON : 21.09.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.12772 of 2016

and

W.M.P.(MD) Nos.9663 and 9664 of 2016

and

W.M.P.(MD) No.12267 of 2023

J.George Benjamin

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road,
Chennai-6.

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

3.The Assistant Elementary
Educational Officer,
Gujiliamparai,
Dindigul District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records relating to the



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impugned order passed by the 1st respondent in his proceedings Na.Ka.No. 25042/T4/13 dated 06.03.2014 and the consequential impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.427/A1/2016 dated 29.06.2016 and quash the same as illegal, arbitrary and in violation of principles of Natural Justice.

For Petitioner : Mr.M.D.Kirubakaran
For Respondent : Mr.V.Nirmal Kumar
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the material available on record.

2. The case of the petitioner is that the petitioner was a Diploma holder in Teacher Education Course and he was appointed as the Secondary Grade Teacher on 28.07.1988 at Panchayat Union Elementary School, Kodaikanal Union, Dindigul District. Subsequently, he completed B.Lit (Tamil) degree in the year 1998 and M.A.(Tamil) in the year 2005. In the



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meanwhile, he was promoted to the post of Elementary School Headmaster on 01.07.1998 at Panchayat Union School, Methaipatti, Gujiliyamparai Union, Dindigul District and subsequently, he was promoted to the post of Middle School Headmaster on 18.06.2001 at Panchayat Union Middle School, Koomburpudur, Gujiliyamparai Union, Dindigul District. After promotion to the post of Middle School Headmaster, he completed B.Ed., Course in April, 2019. Since B.Ed., is an additional qualification, he is entitled to incentive increment and accordingly, by the proceedings of the Additional Assistant Elementary Educational Officer, Gujiliyamparai, in Na.Ka.No.154/A1/2011, dated 20th October, 2011, an order was passed granting two incentive increments on account of completion of M.A., and B.Ed., and in the same proceedings, Selection Grade was also given to the petitioner for the post of Middle School Headmaster with effect from 18.06.2011 and accordingly, pay revision was effected. He has been receiving pay benefits as per order dated 20th October, 2011.

3. Subsequently, the 3rd respondent has passed the impugned order in proceedings in Na.Ka.No.427/A1/2016, dated 29.06.2016 stating that the



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2nd respondent conducted an inspection in the office of the 3rd respondent on 06.05.2016 and an inspection report dated 13.05.2016 was received by the 3rd respondent, wherein some defects were pointed out as cited in the annexure enclosed along with the impugned order and the petitioner was directed to remit in the Government Treasury the additional amounts received by him. The annexure enclosed with the impugned order refers to the order of the Additional Assistant Elementary Educational Officer, dated 20th October, 2011 by which the petitioner was granted incentive increments for acquiring additional qualifications.

4. It is also stated in the said annexure that the 1st respondent has passed the order in Na.Ka.No.25042/T4/2013, dated 06.03.2014 clarifying that B.Ed., degree is one of the qualifications for promotion to the post of Middle School Headmaster and the same cannot be considered as higher qualification and accordingly, the incentive increments received by the petitioner with effect from 15.04.2009 shall be cancelled and the additional amount shall be remitted in the Government Treasury.



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5. Learned counsel for the petitioner submits that the proceedings of the 1st respondent dated 06.03.2014 was a communication sent to the District Elementary Educational Officer, Trichy, answering a query to the effect that B.Ed., is one of the qualifications for appointment to the post of Middle School Headmaster and therefore, the 2nd respondent ought not to have relied upon the said proceedings for cancellation of the incentive increments granted to the petitioner. Learned counsel would submit that in any event, the 3rd respondent ought to have granted an opportunity of hearing before passing the impugned order dated 29.06.2016 and as such, the impugned order has been passed by the 3rd respondent without affording any opportunity of hearing, the same is liable to be set aside, as it is in violation of principles of natural justice.

6. Learned counsel for the petitioner further submits that it is well settled that the amount wrongly paid to the employee shall not be recovered, unless it is proved that such payment has been made on account of misrepresentation or fraud played by such employee. In the preset case, the



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incentive increment was granted to the petitioner considering the fact that he acquired higher qualification of B.Ed., degree course after promotion to the post of Middle School Headmaster, which is valid and sought to allow the writ petition.

7. On the other hand, basing on the averments of the counter affidavit filed by the respondents, learned Government Advocate contends that the petitioner was appointed as Secondary Grade Teacher on 28.07.1988 and subsequently was promoted as Middle School Headmaster on 18.06.2001. The petitioner completed B.Lit (Tamil) in the year 1998 and M.A. (Tamil) in the year 2005. At the time when he was working as Middle School Headmaster, incentive increment was sanctioned for acquiring B.Ed., degree with effect from 15.04.2009. Learned Government Advocate submits that the Middle School Headmasters are not eligible for incentive increment for the possession of B.Ed., degree after they are promoted as Middle School Headmasters.



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8. Learned Government Advocate further contends that the petitioner is mainly relying on the clarification issued in G.O.Ms.No.107, dated 20.01.1976, which is not applicable to the petitioner. He has drawn the attention of this Court to Paragraph No.5(iii) of G.O.Ms.No.107, which is extracted hereinunder:

“5(iii) In modification of pera 2(ii) above, the Government now issued revised orders to the following effect.

Tamil Pandit Grade I who do have to possess BT. for initial appointment, and Grade II Tamil and its may be allowed two incentive increments either for B.T., or for M.A.,

Advance increments may be allowed a second time for such teacher who after passing B.T., passess M.A., or after passing M.A. passes B.T., Advance increments shall not be allowed to them for passing M.Ed.”

9. Learned Government Advocate would submit that these clarifications have been issued for incentive increments in the category of



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Tamil Pandits only and not in the category of Middle School Headmasters or any other category. It was confirmed in Na.Ka.No.012605/E1/2015, dated 11.08.2016 of the Director of Elementary Educational, Chennai, wherein it is specifically informed that there is no specific provision in the Government Orders for granting incentive increment for the qualification of B.Ed., for those who have been promoted as Middle School Headmasters on the basis of B.Lit., degree without B.Ed., and who passes B.Ed., after promotion as Middle School Headmaster. In view of such provision, the incumbents who have been promoted to the post of Middle School Headmasters such as the petitioner, on the basis of B.Lit., qualification without B.Ed., and possessed the qualification of B.Ed., after getting promotion as Middle School Headmaster are not entitled for any incentive increment for the qualification of B.Ed.

10. Learned Government Advocate further submits that the orders of the 1st and 3rd respondents are based on the Government Orders and the order of recovery is based on the audit objection and there is no irregularity in the impugned orders and accordingly, sought to dismiss the writ petition.



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11. Learned counsel for the petitioner has placed reliance on the following orders of this Court:

- i. K.Sornakumari and another v. The Director of Elementary Education and others [W.P.(MD) Nos.21368 of 2014 and 4332 of 2015, dated 05.04.2017];*
- ii. A.Dhanalakshmi v. The State of Tamil Nadu and others [W.P.(MD) No.3067 of 2022, dated 23.09.2022]*
- iii. M.Pushpa Therese v. The State of Tamil Nadu and others [W.P.No. 22907 of 2021, dated 27.10.2021];*
- iv. R.Nirmala v. The State of Tamil Nadu [W.P.No.33560 of 2019, dated 13.06.2023] and*
- v. M.Muthukaruppan v. The Secretary to Government, School Education Department, Government of Tamil Nadu [W.P.(MD) No. 16106 of 2016, dated 20.07.2023]*



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12. Learned Government Advocate relied on the orders dated 23.09.2022 in W.P.(MD) No.3067 of 2022 and dated 24.02.2023 in W.P. (MD) No.424 of 2020 etc., batch.

13. This Court gave anxious consideration to the submissions made by the respective counsels and perused the materials available on record and the reliance placed on both sides.

14. Admittedly, there is no dispute with regard to the facts of the case. The issues to be considered in this writ petition are: (i) Whether the petitioner is entitled for incentive increment for possessing B.Ed., degree after promotion as Headmaster of the middle level school or not; and (ii) Whether the respondents are entitled to recover additional amount towards incentive increment granted to the petitioner as per order dated 20th October, 2011.



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15. Admittedly, Issue No.1 was already settled by this Court in W.P.(MD) No.3067 of 2022. On examining the relevant Government Orders and the clarifications issued by the Government from time to time and on consideration of the earlier orders passed by this Court, this Court held as extracted hereinunder:

“13. More than anything else, as rightly pointed out by the learned Special Government Pleader, the post itself is called as Headmaster of Middle School (B.Ed. Grade). The petitioner of course was eligible to be promoted as Headmaster B.Ed. Grade, even though she was not having B.Ed. Otherwise, B.Ed. was held to be an essential qualification. Therefore, cancellation of the incentive increment granted to the writ petitioner in light of the clarificatory letter of the Government, dated 10.10.2017 is in order and it does not warrant any interference. The impugned order is quashed to the extent it orders recovery. The order cancelling the incentive increment conferred on the writ petitioner for her having acquired B.Ed. degree qualification is sustained.”



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16. By order dated 24.02.2023, in W.P.(MD) No.424 of 2020 etc., batch, this Court held as extracted hereinunder:

“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”

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



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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.”

In view of the above, it is clear that B.Ed., degree is also one of the qualifications for promotion to the post of Middle School Headmaster.

17. In the present case, the petitioner got promotion to the post of Middle School Headmaster with B.Lit., degree, which is also one of the qualifications. Rule 6(b)(i) of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service Rules stipulates that for appointment as Middle School Headmaster, B.Ed., degree is also prescribed as one of the essential qualifications. The petitioner, by obtaining B.Ed. degree, after promotion to the post of Middle School Headmaster, cannot claim incentive increment for possessing B.Ed., degree as an additional qualification. As such, the order cancelling the incentive increment conferred on the petitioner by order dated 20.10.2011 for having acquired B.Ed., degree qualification is not warranting interference by this Court.



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18. To answer the second issue with regard to the recovery of the additional amount granted to the petitioner for acquiring B.Ed., degree, it appears that the Additional Assistant Elementary Educational Officer, by order dated 20.10.2011, granted incentive increment on account of acquiring B.Ed., degree. Now, the respondents are contemplating to recover the said amount by way of the impugned proceedings dated 29.06.2006.

19. In view of the facts and circumstances, the issue of recovery of incentive amount granted to the employees was already decided by the Hon'ble Apex Court in the case of ***State of Punjab and others etc., vs. Rafiq Masih (White Washer) etc.***, reported in ***(2015) 4 SCC 334***, wherein it was 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 herein above, we may, as a ready



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20. At this point, the petitioner relied on the orders of this Court in W.P.(MD) No.21368 of 2014, dated 05.04.2017; W.P.(MD) No.22907 of 2021, dated 27.10.2021; and W.P.No.33560 of 2019, dated 13.06.2023, wherein it is held that the petitioners therein are entitled for incentive increment for acquiring the qualification of B.Ed. Degree. But in the considered opinion of this Court, in W.P.(MD) No.3067 of 2022, dated 23.09.2022; and W.P.(MD) No.424 of 2020 etc., batch, dated 24.02.2023, the learned Single Judges had considered the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service and the clarification in Letter No.3702/2017, dated 10.10.2017 issued by the Secretary to Government, School Education Department, Government of Tamil Nadu and passed reasoned order holding that the petitioners therein are not entitled for incentive increment for acquiring B.Ed., degree as B.Ed., degree itself is one of the essential qualifications for promotion to the post of Middle School Headmaster. Admittedly, as observed in W.P.(MD) No.3067 of 2022, in all subsequent orders passed by the various Judges, the clarification letter of the Government dated 10.10.2017 was not considered.



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21. By following the said decision of the Hon'ble Apex Court, in W.P.(MD) No.3067 of 2022 and W.P.(MD) No.16106 of 2016, the recovery orders were quashed by this Court. In W.P.(MD) No.16106 of 2016, this Court observed as extracted hereinunder:

“5. The 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 incentives have been awarded as early as in 2007, whereas the impugned order has been passed only in 2016, 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 order of recovery order dated 19.07.2016 only, the order of recovery dated 19.07.2016 alone is quashed. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.”



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22. For the above mentioned reasons, the impugned order is quashed to the extent it orders recovery. The order cancelling the incentive increment granted to the petitioner for acquiring B.Ed., degree is sustained.

23. Accordingly, this Writ Petition is partly allowed.

24. There shall be no order as to costs.

25. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Note: Issue order copy by 26.09.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Director of Elementary Education,
College Road,
Chennai-6.
- 2.The District Elementary Educational Officer,
Dindigul, Dindigul District.
- 3.The Assistant Elementary
Educational Officer,
Gujiliamparai,
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BATTU DEVANAND, J.

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Pre-delivery Order made in
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21.09.2023