



W.P.(MD)No.24024 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.12.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.24024 of 2022 &
W.M.P.(MD)No.21692 of 2022

P.Ekanathan

...Petitioner

Vs.

1.The Secretary to the Government,
Department of Health and Family Welfare,
St.George Fort, Chennai.

2.The Director of Public Health Service and
Preventive Medicine,
No.359, DMS Complex,
Anna Salai, Tenampet,
Chennai - 600 006.

3.The Deputy Director of Health Service,
Sivagangai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to impugned order of recovery passed by the third respondent in his proceedings Na.Ka.No.7421/A1/2022 dated 30.09.2022 and quash the same as illegal and consequentially direct the respondents to refund a sum of Rs.6,20,409/- with interest and restore the original pay within the period that may be stipulated by this Court.



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For Petitioner : Mr.V.P.Rajan

For Respondents : Mr.T.Villewankothai,
Additional Government Pleader

ORDER

The present writ petition has been filed by a Lab Assistant working in the Health Department challenging the order of recovery passed by the third respondent herein.

2. The petitioner herein was appointed as a Lab Assistant in the office of the third respondent with B.Sc. Zoology qualification. The petitioner had sought permission from the higher authorities for pursuing M.Sc. Zoology course. After obtaining permission from the authorities, the petitioner had joined the said course and had passed M.Sc. in the year 2008. By an order dated 24.07.2012, the second respondent herein has conferred two advance increments to the writ petitioner along with 24 others for possessing higher qualification based on G.O.Ms.No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010.



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3. In the impugned order, the Deputy Director namely the third respondent herein had sought to recover the said amount from the writ petitioner on the ground that he is not eligible to advance increments on possessing a higher qualification. This order is under challenge in the present writ petition.

4. According to the learned counsel appearing for the writ petitioner, as per G.O.Ms.No.97, Personnel and Administrative Reforms (FR-IV) Department, dated 05.07.2010, for any higher qualification obtained by a Government Servant, he is eligible for two advance increments. He further relied upon G.O.Ms.No.37, Personal and Administrative Reforms (FR-IV) Department, dated 10.03.2020, wherein, in clause 6 (iv), it has been clarified that if any advance increment for acquiring higher qualification has already been granted, the same shall not be recovered. The learned counsel for the writ petitioner further pointed out that another Lab Assistant namely Radha Krishnan who was granted incentive increment for possessing M.Sc. Zoology was inflicted with the order of recovery which he had challenged in the year 2014 in W.P.No.19475 of 2014. The said writ



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petition was allowed on 18.12.2019. The writ appeal filed against that order in W.A.No.169 of 2022 was dismissed on 01.03.2022.

5. The learned counsel for the petitioner further relied upon the communication of the second respondent herein to the first respondent to re-call the order dated 21.08.2019, wherein, he had directed for recovery of the alleged excess amount paid as advance increments.

6. *Per contra*, the learned counsel appearing for the respondents had contended that the second respondent herein had issued a communication on 21.08.2019 to the effect that the Entomologist are not eligible to receive incentive increments on acquisition of M.Sc. Zoology. Hence, the incentive increments granted to the writ petitioner are not legally sustainable and therefore, he prayed for confirming the order passed by the third respondent.

7. I have carefully considered the submissions on either side and perused the records.



8. The entire claim of the writ petitioner is based upon

G.O.Ms.No.97, Personnel and Administrative Reforms (FR.IV)

Department, dated 05.07.2010. A perusal of the said Government Order indicates that the Government Servant is eligible for two advance increments as and when they acquire higher qualification. In the present case, the petitioner was appointed as a Lab Assistant for which prescribed qualification is B.Sc. Zoology. Certainly, the acquisition of M.Sc. Zoology would enhance his work performance and hence, the granting of incentive increments for acquisition of higher qualification is legally sustainable under the said Government Order. That apart, the Government in their order in G.O.Ms.No.37, Personal and Administrative Reforms (FR-IV) Department, dated 10.03.2020 had categorically declared that any incentive increment which has already been disbursed to the Government Servant need not be recovered. When the Government Orders are operating in the field, a letter of the first respondent herein cannot supersede them. Therefore, the letter dated 21.08.2019 said to have been issued by the second respondent is not enforceable.



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9. In view of the above said findings, the impugned order in the writ petition is set aside. The writ petition is allowed. Any consequential orders passed pursuant to the impugned order are also set aside and the petitioner shall be restored to his original position. The recovered amount shall be refunded within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.12.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking Order

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To

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R.VIJAYAKUMAR, J.

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