



W.P(MD).No.16103 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.07.2023

Pronounced on : 20.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD).No.16103 of 2016

and

W.M.P(MD).No.13282 and 11765 and 11766 of 2016

S.Radhakrishnan

... 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,
Pudukottai District,
Pudukottai.
- 4.The Zonal Accounts Officer (Audits),
School Educational Department,
Madurai -2.
- 5.The Headmaster,
Government High School,
Kavarampatti,
Pudhukottai District.

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the second 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.112/2016, dated 05.07.2016 and quash the same as illegal, arbitrary, violation of principles of law.

For Petitioner	: Mr.M.Jothibasu
For R1 to R4	: Mr.V.Nirmal Kumar
	Government Advocate

ORDER

Heard Mr.M.Jothibasu, learned counsel for the petitioner and Mr.V.Nirmal Kumar, learned Government Advocate for the respondents 1 to 4.

2. The challenge in this matter is the order of recovery dated 05.07.2016. The petitioner was appointed as B.T.Assistant in Government High School, Kavarampatti, Pudhukottai District. On 09.03.2009, the petitioner got higher qualification of M.Phil degree. The incentive was granted on 09.03.2009. While this is so, it appears that the State had issued a Letter bearing No.129, dated 17.07.2013, prescribing a



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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.*, (2015 (4) SCC 334). At paragraph – 12 thereof the Hon'ble Supreme Court prescribes 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



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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.”

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 2009, 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 05.07.2016 only, the order of recovery dated 05.07.2016 alone is quashed. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.07.2023

Index :Yes
Internet:Yes
CM



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BATTU DEVANAND, J.

CM

ORDER MADE IN

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