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W.P.No.9045 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM :
THE HONOURABLE MR.JUSTICE BATTU DEVANAND

Writ Petition No.9045 of 2018
and W.M.P.No.10900 of 2018

C.Maheshwari

... Petitioner

Vs.

1.State of Tamil Nadu rep. by,
Secretary to Government,
School Education Department,
Fort St.George, Chennai – 9.

2.The Director of School Education,
College Road,
Chennai – 6.

3.The Joint Director of School Education (Personnel),
DPI Campus,
College Road, Chennai – 6.

4.The Chief Educational Officer,
Dharmapuri District, Dharmapuri.

5.The Head Master,
Government Higher Secondary School (G),
Papparappati,
Dharmapuri District.

... Respondents



W.P.No.9045 of 2018

WEB COPY

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records relating to the impugned order in Na.Ka.No.140/2017 dated 20.11.2017 issued by the 5th respondent and quash the same.

For Petitioner : S.Nedunchezhiyan

For Respondents : Mr.P.Raja Rajeshwari,
Government Advocate

ORDER

Heard Mr.S.Nedunchezhiyan, learned counsel for the petitioner and M/s.P.Raja Rajeshwari, learned Government Advocate for the respondents.

2. The challenging in this matter is the order of recovery dated 20.11.2017. The petitioner was appointed as B.T.Assistant in Government Higher Secondary School (G), Papparappatti, Dharmapuri District. In the year 2007, the petitioner got higher qualification of M.Phil degree. The incentive was granted on 01.10.2007. While 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., (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*



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W.P.No.9045 of 2018

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.”

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 2007, 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.



W.P.No.9045 of 2018

WEB COPY

6. As the petitioner restricts her prayer to challenge the recovery order dated 20.11.2017 only, the order of recovery dated 20.11.2017 alone is quashed. This writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.09.2024

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

To:

- 1.The Secretary to Government,
School Education Department,
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- 2.The Director of School Education,
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- 5.The Head Master,

Page No.5 of 7



W.P.No.9045 of 2018

Government Higher Secondary School (G),
Papparappati,
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WEB COPY

BATTU DEVANAND,J.

vm

W.P.No.9045 of 2018



WEB COPY



W.P.No.9045 of 2018

12.09.2024