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Writ Petition No.5484 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

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THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.5484 of 2018
& WMP.Nos.6777 & 28449 of 2018

V.Thanickachalam

..Petitioner

VS.

1.State of Tamilnadu,
rep. by the Principal Secretary to the Government,
Department of Education,
Fort St George,
Chennai-9

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

3.The Chief Educational Officer,
Coimbatore Educational District,
Coimbatore.

4.The Headmaster,
Govt. Higher Secondary School,
Muthugoundanoor,
Chockalor Post,
Kinnathukadau,
Coimbatore District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,



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praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent in G.O.No.177 dated 13.10.2016 and the consequential recovery order issued by the 4th respondent in reference Na.Ka.No.28/A1/2017 dated 01.12.2017 and quash the same.

For Petitioners : Ms.S.Lakshmi

For Respondents : Ms.P.Rajarajeswari, GA

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorari, to call for the records on the file of the first respondent in G.O.No.177 dated 13.10.2016 and the consequential recovery order issued by the 4th respondent in reference Na.Ka.No.28/A1/2017 dated 01.12.2017 and quash the same.

2.The petitioner is aggrieved by the impugned order of recovery dated 01.12.2017 passed by the 4th respondent, in and by which, the incentive increments already awarded to the petitioner for possessing higher qualification of M.Phil. have been ordered to be recovered. Challenging the same, the petitioner has come forward with the present Writ Petition.



3. A Counter affidavit has been filed on behalf of the 3rd respondent, wherein, it is stated that the petitioner is entitled to get the benefit of incentive increments for his higher qualification M.Phil. only from the date of the issuance of the G.O.Ms.No.117, i.e. 13.10.2016 and hence, no interference is required.

4. The issue involved this Writ Petition regarding granting/recovery of incentive incentives for passing higher qualification of M.Phil., is no more *res integra* in view of the order dated 16.11.2022 passed by the Madurai Bench of this Court in W.P.(MD) No.4973 of 2019, wherein, the petitioner therein challenged the similar recovery order passed by the 3rd and 5th respondents therein, ordering recovery of incentives that were already granted to him for passing higher qualification of M.Phil. The learned single Judge, has categorically held in para 5, which reads as under:

“5. I therefore have no hesitation in coming to the conclusion that awarding of incentive increment in favour of the petitioner for possessing M.Phil prior to 13.10.2016 is clearly incorrect. I may incidentally observe that G.O Ms.No.42 dated 10.09.1969 recites that the Government accepted in principle that incentive payments and awards



should be given to the teachers in schools who acquire higher educational qualifications. Only in the Annexure, the expression 'possesses' finds place. In other words, the original object of the g.o was that the teachers who enter service with lower degrees must be encouraged to acquire higher qualifications and there must be provision of incentive therefor. The petitioner after acquiring higher qualification, namely, MPES and M.Phil joined the service. I fail to understand as to how incentive increments should be given to the person who was already in possession of higher qualification. Be that as it may, the G.O issued by the Government provides for such grant. This court ought not to interfere in the matter. But, I am more than satisfied that the petitioner could not have been given incentive increment for possessing M.Phil prior to the passing of G.O Ms.No.177 dated 13.10.2016. The audit objections were rightly raised. The impugned order therefore does not warrant any interference. The petitioner is aged about only 52 years and therefore, the excess payment made to him can be recovered easily in convenient installments."

5. Aggrieved by the above said order, the petitioner preferred a Writ



Appeal in W.A.(MD) No.119 of 2023 and a Division Bench of Madurai Bench of this Court, vide judgment dated 14.02.2023, while confirming the order of the learned single Judge, dismissed the Writ Appeal. The operative portion as found in para 6 is extracted as under:

“6.In the light of the aforesaid submissions made on either side, we are of the view that the Government issued G.O.(Ms)No.42, Education Department, dated 10.01.1969 for granting incentive increments to those who are possessing or acquiring higher qualification specified in the annexure. G.O.Ms.No.95, Education Department, dated 21.01.1980 was issued for Physical Directors / Physical Education Teachers Grade I & II. The higher qualification mentioned in the aforesaid Government Order are M.P.Ed/B.T or B.Ed or B.P.Ed or Diploma in Physical Education, wherein the qualification of M.Phil has not been prescribed for eligible for payment of the additional increment. Therefore, the Writ Court has rightly rejected the claim of the writ petitioner and there is no illegality or irregularity in the order passed by the Writ Court. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

6.In the present case, it is not in dispute that the petitioner has been



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sanctioned incentive increments from the date of his appointment, i.e. prior to the date of G.O.Ms.No.117, i.e. 13.10.2016 and taking note of the same, the 4th respondent, vide impugned order dated 01.12.2017, has rightly ordered recovery of the same, which, in the opinion of this Court, does not warrant interference.

7. Accordingly, following the orders passed by the Madurai Bench of this Court (cited supra) and in the light of the above discussion, this Court is inclined to dismiss this Writ Petition.

8. In fine, the Writ Petition is dismissed.

No costs.

Consequently connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order: Yes/No
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BATTU DEVANAND, J

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