



W.P.No.7800 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.7800 of 2024

W.M.P.No.8732 of 2024

V.Loganayagi

...Petitioner

-Vs-

1.The Director of Elementary Education
Perasiriyar Anbalagan Kalvi Valagam
College Road
Chennai – 6.

2.The District Educational Officer (Elementary)
Cuddalore District,
Cuddalore.

3.The Block Educational Officer
Keerapalayam Block
Cuddalore District.

4.The Principal Accountant General (A & E) Tamil Nadu
361, Anna salai
Teynampet
Chennai – 18.

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.106/Aa1/2023 dated 19.02.2024 (signed on 28.02.2024) and to quash the same in so far as ordering recovery of incentive increment granted for B.Ed., degree qualification from the year 2010 is concerned and consequently directing the respondents 1 to 3 to forward the pension proposal for payment of retirement benefits as on date of retirement on 31.05.2024.

For petitioner : Mr.G.Sankaran
Senior Counsel for
Mr.S.Nedunchezhiyan

For respondents 1 to 3 : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 19.02.2024 thereby order of recovery of incentive increment which was granted for B.Ed., Degree qualification from the year 2015.



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2. The petitioner was initially appointed as Secondary Grade Teacher in Elementary Education in the year 1990. Subsequently, she was promoted to the post of Elementary School Headmaster in the year 2004. She is qualified with B.Ed., degree and she became eligible for promotion to the post of Middle School Headmaster. Accordingly, promoted to Middle School Headmaster on 18.09.2006. In the year 2010 she also acquired B.Ed., Degree qualification which remains to be an additional qualification, since she was promoted to the post of Middle School Headmaster based on her B.Lit., degree qualification. Therefore, for her additional qualification she was granted incentive in the post of Middle School Headmaster with effect from 01.06.2010 as per G.O.Ms.No.42, Education Department dated 10.01.1969 and G.O.Ms.no.107 dated 20.01.1976. When the petitioner is about to retire from her service, her pension proposal has been submitted through the third respondent's office. On receipt of the same, the third respondent by its communication dated 09.02.2024 stating that the audit has raised objection in respect of awarding incentive for the higher qualification of B.Ed., degree. Therefore, she was called for explanation and submit her explanation within a period of 15 days. However, without completing 15



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days from the date of show cause notice, the 3rd respondent passed an order dated 19.02.2024 thereby ordered to recovery of said amount which was granted from the year 2010. This issue already settled by this Court in W.A.(MD).No.435 of 2017 by an order dated 25.04.2017. The relevant portion of the said order is extracted hereunder:

"7. Further more we find that in somewhat a similar case pertaining to a Tamil Pandit, Thiru.S.Samuthrakani who was appointed that as Middle School Headmaster and subsequently claimed for incentive increment on acquisition of B.Ed., qualification. Clarification was sought for from the Director of School Education as to whether the said increment can be granted and if already granted, whether it has to be stopped. The Director of Education by proceedings dated 07.06.1991 clarified that the post of Middle School Headmaster is a higher post than that of a Tamil Pandit, having a higher basic pay and therefore, there is no necessity for stopping the increment granted to the said Headmaster Thiru.S.Samuthirakani. This clarification would also be applicable to the facts of the case of the appellant/writ petitioner.



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8. Thus, in the light of the clarification issued, it is clear that B.Ed., qualification is not a required qualification for being posted as Middle School Headmaster and in such circumstances acquisition of B.Ed., while holding in the post of Middle School Headmaster has to be considered as higher qualification and therefore, the Department was right in passing the order dated 29.09.2014 granting incentive increment to the appellant/writ petitioner with effect from 24.01.2011. Further, we find that before passing the impugned proceedings dated 30.11.2016, the appellant/writ petitioner was not put on notice and there was no opportunity granted to the appellant/writ petitioner to put forth her case. Under such circumstances, normally this Court would have remanded the matter for fresh consideration to comply with the requirements of principles of natural justice. However, in this case, we take departure from the said procedure on account of the fact that it is clear from the clarification issued by the Director of Elementary School Education as well as from the information furnished under the Right to Information Act that the appellant/writ petitioner is entitled for the incentive increment on acquisition of B.Ed., qualification. Therefore, we are inclined to interfere with the order passed in the writ petition and consequently the order passed by the third respondent dated 30.11.2016."



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3. The Hon'ble Supreme Court of India in the case of '***State of Punjab vs Rafiq Masih (White Washer)***' reported in ***2015 (4) SCC 334*** has held that recovery of any excess payment made, owing to the mistake of the Department for over a period of five years, cannot be made. Since, the respondents have ought to make recovery from June 2010 onwards, the same is impossible in law.

4. Therefore, the petitioner is entitle for the incentive increment of acquisition of pay for higher qualification of B.Ed., degree. That apart, the petitioner was served with show cause notice on 09.02.2024 without completion of 15 days the 3rd respondent passed impugned proceedings dated 19.02.2024. Further, the recovery is made after period of nearly 13 years. She has acquired B.Ed., degree in the year 2010 and she was given incentive with effect from 01.06.2010.



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5. In view of the above, the impugned proceedings passed by the 3rd respondent dated 19.02.2024 is liable to be quashed. Accordingly, the impugned order passed by the 3rd respondent is quashed. In case the respondents have recovered any amount pursuant to the impugned order dated 19.02.2024, the same shall be forthwith return, in any event, within a period of two weeks from the date of receipt of copy of this order.

6. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN,J.
gvn

To

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