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W.P.No.2991 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDES RESERVED ON : 02.09.2024

ORDES PRONOUNCED ON : 28.10.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.2991 of 2018
and WMP.Nos.3647 and 3648 of 2018

1. Dr.N.Senthil Kumar
2. Jahir Hussain H
3. S.Mahendran
4. S.R.Vishnu Kumar
5. V.Umanath

... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St. George,
Chennai 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
3. Regional Accounts Officer (Audit),
School Education Department,
Coimbatore 641 001.
4. Coimbatore District Chief Educational Officer,



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No.500, Raja Street,
Coimbatore 641 001.

5. The Headmaster,
Sri Ramakrishna Mission Vidyalaya Swami Sivanandha
Higher Secondary School,
Periyanaickenpalayam,
Coimbatore 641 020.
6. The Headmaster,
Government Higher Secondary School,
Johilpatti, Virudhunagar District 626 104.
7. The Headmaster,
Government Higher Secondary School,
Poolavadi, Tirupur District 642 206.
8. The Headmaster,
Sourashtra Higher Secondary School,
Madurai 625 009.
9. The Headmaster,
Government Boys Higher Secondary School,
Koradacheri,
Thiruvallur District 613 703.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent dated 19.10.2016 having Re.No.Pa.Mu.No.8831/A4/2016 and the consequential proceedings dated 19.10.2017 having Ref.No.Na.Ka.No.9000/A4/2017 and quash the same as illegal and arbitrary, violative of article 14 of the Constitution of India and consequently forbear the 5th to 9th respondents from recovering the alleged excess payment in the form of 1st incentive increment sanctioned to the petitioners from the date of acquiring M.Phil Degree and continue to pay the salary along with the incentive increment to the petitioners as hitherto done.



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For Petitioner : Mrs.Nalini Chidambaram, Senior Counsel
for M/s.C.Uma

For Respondents
for RR1, 2 4 to 8 : M/s.P.Rajarajeswari
Government Advocate
for R3 : Mr.V.Vijay Shankar

ORDER

Challenging the recovery orders issued by the fourth respondent in
Re.No.Pa.Mu.No.8831/A4/2016 dated 19.10.2016 and
Ref.No.Na.Ka.No.9000/A4/2017, dated 19.10.2017, this Writ Petition has
been filed.

2. The petitioners joined the service as Physical Directors Grade-I in various Schools on different dates. They were granted incentive increment from the date of acquiring M.Phil Degree, but the Audit Department raised objection to the incentive increment granted to the petitioners. Subsequently, the District Educational Officer, Coimbatore, i.e., fourth respondent herein issued proceedings dated 19.10.2016 and 19.10.2017 directing the Headmasters to recover the incentive increment granted to the petitioners, who are working as Physical Directors Grade-I prior to 13.10.2006. Against



the said proceedings, the present Writ Petition has been filed.

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3. The learned Senior Counsel for the petitioners would submit that even assuming allowing of the incentive increment was an error, it can be seen that it was not allowed on any misrepresentation of the petitioners. The mistake is admittedly sought to be corrected, however the amount paid earlier till the date of issue of G.O. in the year 2016 cannot be recovered from the petitioners.

4. The learned Government Advocate appearing for the respondents submits that till G.O.Ms.No.177, School Education Department, dated 13.10.2016 was issued, M.Phil degree has not been recognised as higher qualification. However, the authorities concerned wrongly calculated and sanctioned incentive increment to the petitioners. Therefore, the recovery order issued by the fourth respondent is in accordance with law and sought to dismiss the Writ Petition.

5. To substantiate the arguments, the learned counsel for the petitioners has relied on the order dated 19.07.2023 passed by a learned



Single Judge of this Court in W.P.No.12328 of 2022 and batch. He also relied on the order dated 21.06.2024 passed by a learned Single Judge of this Court in W.P.No.26937 of 2023.

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6. The learned counsel for the respondents, in support of his contentions, relied on the order dated 16.11.2022 in WP(MD).No.4973 of 2019, which was confirmed by the judgment dated 14.02.2023 in W.A.(MD).No.119 of 2023 .

7. Heard learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on records including the reliance placed by the respective counsels.

8. It is seen that while confirming the order dated 16.11.2022 in WP(MD).No.4973 of 2019, the Division Bench of this Court in its judgment dated 14.02.2023 in W.A.(MD).No.119 of 2023 held that the higher qualification mentioned in G.O.Ms.No.95, Education Department, dated 21.01.1980 for Physical Directors / Physical Education Teachers Grade I & II, 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 additional increment. Expressing such finding, the Writ Appeal was dismissed confirming the order of the learned Single Judge.

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9. In the orders relied on by the petitioners in W.P.No.12238 of 2022 and 26937 of 2023, the Court has set aside the recovery orders by following the order of the Hon'ble Apex Court in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and others*** reported in (2015) 4 SCC 34. The relevant paragraph of the order in WP.No.26937 of 2023 is extracted hereunder:

“6. Firstly, it can be seen that the incentive increment was granted by the respondent. The same was not because of any misrepresentation of the petitioner. Secondly, it was allowed with effect from 01.06.2006. The same is now sought to be recovered in the year 2016. In that view of the matter, the Hon'ble Supreme Court of India in Rafiq Masih's case while considering the hardship which would be faced by the employees in the matters of recovery belatedly has laid down the following conditions at paragraph no.18 as situated wherein recovery by the employers would be equivalent in principles of law.

18. 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 the employees belonging to Class III and Class IV service (or Group C and Group D service)

(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery.

(iii) Recovery from the 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 employer's right to recover”.

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10. As seen from the facts of the present case, it came to understand that the petitioners would come within paragraph No. 18(iii) of the order of Apex Court stated supra, whereby the recovery is made in respect of the excess payment, which is made for the period in excess of 5 years before the order of recovery is issued. Therefore, the petitioners are entitled for the benefit of the said judgment. However, in the judgment relied on by the respondents, the judgment of Apex Court stated supra has not been examined.

11. In such view of the matter, this Writ Petition is allowed on the following terms:

(i) The impugned orders passed by the fourth respondent in Re.No.Pa.Mu.No.8831/A4/2016 dated 19.10.2016 and Ref.No.Na.Ka.No.9000/A4/2017 dated 19.10.2017 are upheld inasmuch as they correct the mistake of grant of advance increment and refixation of pay.

(ii) However, the impugned orders are also



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declared to be illegal inasmuch as they order recovery of the amount already paid to the petitioners.

(iii) Even if any recovery had already been made, the same should be refunded to the petitioners within a period of 12 weeks from the date of receipt of a copy of this order.

No costs.

Consequently, connected miscellaneous petitions are also closed.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

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The State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
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Pre-delivery order in

W.P.No.2991 of 2018

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