



WEB COPY



W.P.No.18057 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.18057 of 2020

and

W.M.P.Nos.22427 and 22428 of 2020

S.Gandhi

...Petitioner

Vs.

1. The State of Tamil Nadu
rep by its Secretary,
Department of School Education,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Nungambakkam,
Chennai-600 006.
3. The Regional Accounts Officer (Audit),
School Education Department,
Madurai Region,
Madurai - 625 002.
4. The Chief Educational Officer,
Tiruvallur District,
Tiruvallur.
5. The Headmaster,
Government Higher Secondary School,
Ammalayappan,
Tiruvarur - 613 701.

...Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of recovery passed by the 3rd respondent in Na.Ka.No. 3456/A7/2017, dated 09.11.2017 and consequential impugned order passed by the 5th respondent in Na.Ka.No.86/2020 dated 13.10.2020 and quash the same as illegal and consequently direct the respondents to sanction incentive increments for possessing M.Phil. in Physical Education to the petitioner in the light of the G.O.Ms.No.324, Education Science and Technology Department, dated 25.04.1995 from the date of the petitioner appointment i.e., 01.06.2006.

For Petitioner : Mr.Devaraj Mahesh

For Respondents : Mr.E.Ranganayaki
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the order of recovery dated 13.10.2020 in and by which, the petitioner was directed to pay a sum of Rs.1,67,952/- being the excess amount paid beyond his entitlement between the period 2006 to 2016.

2.The learned counsel for the petitioner would vehemently submit that, they are entitled for the increment, and there was no excess amount paid. Whereas, the learned Additional Government Pleader would strongly object to the submissions made by the learned counsel for the petitioner and would further contend that, the excess amount was paid only based upon the wrong



representation, and that they are entitled to refix the pay, and recover the excess amount in accordance with the audit objection.

3.I have given my anxious consideration to either side submissions.

4.On a perusal of the records, it is apparent that there was no misrepresentation on the part of the petitioner. It appears that on the submission of the representation about the M.Phil., Degree, the respondents sanctioned the increment for his higher education. However, later on, based upon the Audit Report, it came to light that the payment which was made to the petitioner between the period 2006 to 2016, is beyond his entitlement. Since the payment was made without misrepresentation on the part of the petitioner, at this length of time, if any order of recovery is permitted, it would definitely cause great hardship to the petitioner.

5.In this regard, it is useful to refer to the Judgment of the Hon'ble Supreme Court of India in *State of Punjab Vs. Rafiq Masih (White Washer)* reported in *(2015) 4 SCC 334*.

6.Therefore, in view of the above ratio, this Court is of the firm view that



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the order of recovery passed by the respondents is liable to be interfered with.

Further, this Court makes it clear that the refixation made by way of Audit Report is liable to be confirmed.

In the result, this Writ Petition is partly allowed only to the extent of setting aside the order of recovery dated 13.10.2020, however, the fixation made by way of Audit Report is confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.

17.10.2024

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

To

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Chennai - 600 009.
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C. KUMARAPPAN, J.

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