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W.A.No.499 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.02.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.499 of 2024

1.The District Elementary Educational Officer
Kanchipuram District
Kanchipuram

2.The Assistant Elementary Educational Officer
Thirukalukundram Union
Kanchipuram District

.. Appellants

Vs.

V.Prabaavathy

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 15.04.2019 passed in W.P.No.31665 of 2017.

For Appellants : Mrs.Mythreye Chandru
Special Government Pleader

For Respondent : Mr.K.Thilageswaran



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J U D G M E N T

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(Judgment of the court was delivered by R. MAHADEVAN, J.)

The Educational authorities are the appellants herein. This writ appeal is directed against the order dated 15.04.2019 passed by the learned Judge in W.P.No.31665 of 2017, thereby, setting aside the communication dated 24.11.2017 and directing the second appellant to pay the second incentive increment to the respondent / writ petitioner within a period of four weeks.

2. The necessary facts leading to the filing of this appeal would run thus:

2.1. The respondent was initially appointed as Secondary Grade Teacher and was subsequently, promoted as Primary School Headmaster and further promoted as Middle School Headmaster. She acquired the qualification of B.Lit in the year 2007 and B.Ed. in the year 2013. While so, she was granted incentive increment for having acquired B.Ed degree, in the light of G.O.Ms.No.107, Education Department, dated 20.01.1976.

2.2. However, by order dated 24.11.2017, the second appellant cancelled the incentive increment and initiated recovery proceedings against the respondent. Feeling aggrieved, the respondent preferred WP. No. 31665 of 2017 to quash the said proceedings of the second appellant and consequently, direct the authorities to continue to pay the incentive increment payable to her, for



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having acquired B.Ed. degree in compliance with the said G.O.

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2.3. The learned Judge, by order dated 15.04.2019, allowed the aforesaid writ petition as prayed for. Challenging the same, the appellant authorities are before this Court with the present appeal.

3.The main contention of the learned Special Government Pleader appearing for the appellants is that as per G.O.Ms.No.107 Education Department, dated 20.01.1976, incentive increments are allowed for B.T. Assistants (Tamil), who were appointed with B.Lit qualification and the same yardstick was followed for Middle School Headmaster as both posts carries identical scale. However, after the 4th pay commission, B.Ed qualification is made compulsory for Middle School Headmaster with effect from 01.06.1988 and Middle School Headmaster is a promotional post from the B.T. Assistant. Thus, the B.Ed. qualification is only a prescribed qualification and the incentive increments are applicable only for additional qualification over and above the prescribed qualification. Accordingly, the benefit of the Government Order cannot be extended to the respondent, as her B.Ed qualification is not an additional qualification. Stating so, the second appellant cancelled the increment granted to the respondent, by the order impugned in the writ petition. However, the learned Judge erred in setting aside the same and allowed the writ petition



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filed by the respondent, by the order impugned herein, which will have to be set aside by this court.

4. On the other hand, the learned counsel for the respondent submitted that after examining the facts and circumstances of the case and also following the earlier order passed in an identical case, the learned Judge allowed the writ petition and therefore, the same does not warrant any interference at the hands of this court.

5. Heard both sides and perused the records.

6. The facts remain undisputed are that the respondent was initially appointed as secondary grade teacher on 02.04.1990 and thereafter, was promoted as Primary School Headmaster in the year 2005 and as Middle School Headmaster on 02.08.2010. She acquired B.Lit qualification in the year 2007 and B.Ed degree in the year 2013. It is also not in dispute that after she was promoted as Middle School Headmaster, the respondent was granted incentive increment on 27.05.2013 for having acquired B.Ed qualification. While so, the second appellant, *vide* order dated 24.11.2017, cancelled the incentive increment granted for acquiring B.Ed qualification by the respondent and



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ordered for recovery of the incentive increment already paid. Challenging the same, the respondent preferred writ petition, which was allowed by the learned Judge, by the order impugned in this writ appeal.

7. Admittedly, incentive increment (two advance increments) is granted to the teachers, who have acquired higher qualification over and above the prescribed qualification, in accordance with G.O.Ms.No.42 Education Department dated 10.01.1969. The State Government, in order to promote Tamil, has amended the rule by stating that a degree in Tamil of any University in the State was kept on par with B.Ed and B.T. and they are placed as eligible in the feeder category to be promoted as Headmaster. That apart, as per Rule 6(b)(i) of the Special Rules for the Tamil Nadu Elementary Educational Subordinate Service, the qualification for a person to be appointed as Middle School Headmaster, is a degree of any University in the State or a degree of equivalent standard and B.T. or B.Ed. degree of any University in the State. Thus, it is clear that B.T., B.Ed., and B.Lit. are on par. If a person has acquired the qualification of B.Ed, the same will be treated as equal qualification of B.Lit and it is not the higher qualification being considered for incentive increment, which is granted only for higher qualification and not for the basic qualification.

8. In the light of the above position, the respondent, who has been promoted to the post of Middle School Headmaster, on the basis of B.Lit.



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qualification without B.Ed., and possessed the qualification of B.Ed., after getting promotion as Middle School Headmaster, is not entitled for any incentive increment for the qualification of B.Ed. Hence, the order of the second appellant cancelling the incentive increment granted to the respondent holds good, in the opinion of this court.

9. With regard to the recovery of the additional amount granted to the respondent for acquiring B.Ed. degree, it appears that the incentive increment was granted to the respondent on 27.05.2013, for having acquired B.Ed., qualification. Now, the appellants are contemplating to recover the said amount by way of the impugned proceedings dated 24.11.2017. This court is of the view that the issue of recovery of incentive amount granted to the employees was already decided by the Hon'ble Apex Court in *State of Punjab and others etc., vs. Rafiq Masih (White Washer) etc. [(2015) 4 SCC 334]*, wherein it was held as follows:

“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 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



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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.”

9.1. In the light of the aforesaid decision of the Hon'ble Apex Court, the second part of the order passed by the second appellant relating to recovery proceedings, cannot be allowed to be sustained and accordingly, the order of the learned Judge setting aside the same, do not call for any interference.

10. For the foregoing reasonings, the order of the learned Judge passed in the writ petition insofar as grant of incentive increment to the respondent, is set aside. However, the appellants are not entitled to initiate recovery proceedings in respect of payment of incentive increment already granted for having acquired B.Ed qualification by the respondent, after promotion as Middle School Headmaster.



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R. MAHADEVAN, J.

AND

MOHAMMED SHAFFIQ, J.

11.This writ appeal stands disposed of in the above terms. No costs.

[R.M.D,J.] [M.S.Q, J.]

15.02.2024

Internet : Yes

Neutral Citation : Yes/No
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To

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