



WEB COPY

W.P.No.27155 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.32218 of 2022
and W.M.P.No.31626 of 2022

P.Gandhimathi

... Petitioner

Vs.

1.The Chief Educational Officer,
Salem.

2.The District Educational Officer,
Salem.

3.The Principal Accountant General (A&E),
Tamil Nadu, Chennai 600 018.

4.The District Treasury Officer,
Salem.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent relating to the order in Proceedings Na.Ka.No.000029/A3/2020 dated 26.08.2022, to quash the same and to issue consequential directions to the respondents to disburse the monthly pension, pension arrears, commuted value of pension and disburse the same within a limited time frame with interest for the delayed payment.



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For Petitioner : Mr.M.Ravi

For Respondents : Mr.S.Prabhakaran, GA for R1 to R2
No appearance for R3 & R4

ORDER

This Writ Petition has been filed for quashment of the proceedings of the 2nd respondent in Na.Ka.No.000029/A3/2020 dated 26.08.2022 and consequential directions to the respondents to disburse the monthly pension, pension arrears, commuted value of pension and disburse the same within a limited time frame with interest for the delayed payment.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The learned counsel for the petitioner submitted that the petitioner was initially appointed as Post Graduate Assistant in Government Girls Higher Secondary School, Salem and was promoted as Headmistress on 08.08.2016 and thereafter, re-employed as Headmistress of Municipal Girls High School, Pavadi, Salem. The 2nd respondent by its proceedings dated 07.12.2019 in Ni.Mu.No.6452/A3/2019, had issued orders for release of



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DCRG amount of Rs.19,14,705/- and the same was disbursed to the petitioner. Later on, the petitioner has not been given monthly pension, commuted value of pension and encashment of earned and unearned leave and Special Provident Fund benefits. Based on the qualifications of M.Phil/Ph.D degree acquired by the petitioner, incentive increment was awarded to the petitioner. She was unconditionally permitted to retire from service as Head Mistress on attaining superannuation on 30.09.2019. Now, the second respondent based on the audit objection, passed an order of recovery of incentive increments awarded to the petitioner for acquiring Post Graduation Degree of M.Phil/Ph.D.

4. Challenging the said order, the petitioner has preferred a Writ Petition in W.P.No.16501 of 2020 and this Court, by an order dated 15.03.2022, has set aside the order of recovery passed by the second respondent and further directed the second respondent to consider and pass appropriate orders on merits and in accordance with law after providing an opportunity of hearing to the petitioner. Thereupon, the second respondent by its proceedings dated 26.08.2022, had issued an order of cancelling the incentive increment sanctioned to the petitioner earlier and revised the pay,



which is unsustainable in law.

5. He further submitted that the Hon'ble Supreme Court in the case of *State of Punjab vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334, has held that the recovery of any excess payment made, owing to the mistake of the Department for over a period of 5 years, cannot be made. The aforesaid decision of the Hon'ble Supreme Court has been followed in the Government Order in G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018, which bars any recovery from retired employees or recovery from any employee, the excess payment has been made for a period in excess of five years before the order of recovery is issued.

6. The learned Government Advocate appearing for the respondents 1 and 2 submitted that as per Government Letter (Ms) No.268, Higher Education, dated 29.08.2006 and G.O.Ms.No.91, Higher Education (K2) dated 03.04.2009, the degree obtained in June 2007 cannot be considered as eligible degree for sanction of incentive increment. It is further submitted that in similar Writ Petition in W.P.(MD) No.14073 of 2020, challenging the recovery of incentive increment paid to similarly placed persons for obtaining M.Phil was dismissed on 15.11.2021. Further, it is submitted that the



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Government of Tamil Nadu on 29.08.2006 had prohibited the Universities from offering M.Phil courses through distance education from the academic year 2007-08. The petitioner has joined the M.Phil degree course in 2006-2007, she was awarded the M.Phil degree in June 2006 and as such the degree obtained after the academic year 2006-2007, through distance education mode, cannot be considered as eligible degree for incentive increment. The petitioner filed a Writ Petition before this Court in W.P.No.16501 of 2020 for quashment of the order of the second respondent dated 09.01.2020 and this Court by an order dated 15.03.2022 had allowed the said petition. The second respondent, after careful consideration of the case of the petitioner, issued the impugned proceedings vide Na.Ka.No.000029/A3/2020 dated 26.08.2022 stating that based on the audit report of the Regional Accounts Officer, Coimbatore and as per the judgment of this Court in W.P.No.16501 of 2020, to cancel the incentive increment given to the petitioner for acquiring M.Phil degree through distance education. Therefore, there is no infirmity in the impugned order passed by the second respondent.

7. In view of the submissions made by the learned counsel on either



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side and in the light of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab vs. Rafiq Masih (White Washer)* stated supra, this Court finds that the recovery of any excess payment made, owing to the mistake of the Department for over a period of 5 years, cannot be made. Hence, this Court directs the respondents to pay the amount, if any recovered from the petitioner. The respondents are also directed to make all the payments due to the petitioner as per law, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition, if any, is closed.

25.10.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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VIVEK KUMAR SINGH, J.

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