



W.P.No.27482 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No. 27482 of 2017

and

W.M.P.Nos. 29369 & 29370 of 2017

B.Subramaniyan

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road,
Chennai - 6.

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

3.The Assistant Elementary Educational Officer,
Kumaratchi Union,
Cuddalore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the 1st respondent in



W.P.No.27482 of 2017

Na.Ka.No.017731/E1/2015, dated 24.08.2016 and the consequential impugned orders passed by the 3rd respondent in Na.Ka.No.243/A2/2017 dated 17.08.2017 and Na.Ka.No.243/A2/2017 dated 17.08.2017 served on 17.11.2017 and quash the same and consequently direct the 3rd respondent herein to re-fix / restore the scale of pay of the petitioner of Rs.16,010/-.
(Prayer amended vide Order dated 07.12.2022 made in WMP.2640/2021 in WP.27482/2017 by MSRJ)

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.S.Prabhakaran
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned recovery order passed in pursuance of the cancellation of the incentive increment and the order re-fixing the scale of pay of the petitioner dated 17.08.2017.

2. The petitioner was appointed as a Secondary Grade Teacher on 05.07.2004 and posted at Panchayat Union Primary School, Nadukuppam,



W.P.No.27482 of 2017

Marakanam Union, Villupuram District. The petitioner, with the permission of the department, studied M.A. degree in the year 2009 and obtained B.Ed., in the year 2011 and the same was entered in the petitioner's service register. The petitioner stated that as per G.O.Ms.No.42 dated 10.01.1969 and G.O.Ms.No.324 dated 24.05.1995, he was entitled to sanction of two set of incentive increments for acquiring higher qualification of M.A., and B.Ed., and the petitioner was also receiving the said incentive increments for the said degrees with effect from 27.12.2011.

3. While so, to the dismay of the petitioner, the 3rd respondent passed the impugned order of recovery dated 17.08.2017 directing the petitioner to remit the sum of Rs.2,87,129/- and also by a separate re-fixation order, re-fixed the scale of pay from Rs.16,010/- to Rs.13,810/- and cancelled the order sanctioning incentive increments with effect from 27.11.2011. The petitioner states that the only ground on which the impugned orders were passed was that there was audit objection to the degrees obtained by the petitioner. The petitioner therefore, filed the Writ Petition, challenging the impugned order.



W.P.No.27482 of 2017

4. The respondents filed a counter stating that though G.O.Ms.No.324 dated 24.05.1995 permitted sanctioning of incentive increment for any degree obtained in the higher secondary syllabus, G.O.Ms.No.134 School Education (G2) dated 15.06.2007 and the proceedings of the Director of Elementary Education on 24.08.2016 clearly stated that degrees other than Tamil, English, Science, Maths and Social Science obtained upto 01.01.2007 would be considered for promotion and not for incentive or increment.

5. According to the respondents, the petitioner was not entitled to two sets of incentives as the same was contrary to G.O.Ms.No.134 dated 15.06.2007 and the proceedings of the Director of Elementary Education on 24.08.2016 and therefore, the recovery was made. The respondents submitted that the impugned order was passed in pursuance to the Audit Report dated 02.02.2017 wherein the audit party objected to the grant of incentive to the petitioner.

6. It is seen from the impugned order that absolutely no reasons are cited except for stating that there was an audit objection. It is also seen that



W.P.No.27482 of 2017

no notice was issued to the petitioner before ordering recovery and re-fixing the petitioner's pay. The respondents have tried to justify the impugned order by citing various reasons like the violation of G.O.Ms.No.134 and the violation of the proceedings of the Director of Elementary Education dated 24.08.2016. In my view, the respondents cannot be permitted to improve their case in the counter, when no reasons are found in the impugned order.

7. The Hon'ble Supreme Court in ***Mahendra Singh Gill Vs. Union of India*** has laid down that the respondents cannot be permitted to improve their case in the counter while supporting the impugned order. One other aspect, which begs consideration is no notice was issued to the petitioner before passing the impugned order for recovery and re-fixation of pay scale. The failure to give notice before passing the impugned order is violative of the principles of natural justice and therefore, the impugned order cannot be sustained. Hence, the impugned order is set aside not only for violating the principles of natural justice but also for not stating any reasons in support of the same.



W.P.No.27482 of 2017

WEB COPY 8. In view of the same, this Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

24.10.2024

kkn

Internet : Yes/No

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No



W.P.No.27482 of 2017

WEB COPY To

- 1.The Director of Elementary Education,
College Road, Chennai - 6.
- 2.The District Elementary Educational Officer,
Cuddalore, Cuddalore District.
- 3.The Assistant Elementary Educational Officer,
Kumaratchi Union, Cuddalore District.



WEB COPY



W.P.No.27482 of 2017

N.MALA, J.

KKN

W.P.No. 27482 of 2017
and
W.M.P.Nos. 29369 & 29370 of 2017

24.10.2024