



W.P(MD)No.1044 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.1044 of 2021

Ramalatha

... Petitioner

Vs.

1.The District Educational Officer,
Tuticorin,
Tuticorin District.

2.The Block Educational Officer,
Karunkulam,
Tuticorin District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records order of the 1st respondent in his proceedings No.O.Mu. 4300/AA2/2020, dated 02.11.2020 in so far as ordering to recover the incentive granted for higher qualification in Clause No.IV and quash the same consequently direct the respondent to grant selection grade pay to the petitioner within a time frame as stipulated by this Court.

For Petitioner : Mr.A.Srinivasan

For Respondents : Mr.G.Suriyaananth
Additional Government Pleader



W.P(MD)No.1044 of 2021

WEB COPY

ORDER

The present writ petition has been filed to seeking direction to call for the records order of the 1st respondent in his proceedings No.O.Mu. 4300/AA2/2020, dated 02.11.2020 in so far as ordering to recover the incentive granted for higher qualification in Clause No.IV and quash the same consequently direct the respondent to grant selection grade pay to the petitioner within a time frame as stipulated by this Court.

2. The petitioner joined in the service at Sanimedu Panchayat Union Middle School, Villupuram District as a Secondary Grade Teacher on 23.10.1999. At the time of joining service, she was qualified in B.Com degree and she was also pursuing her P.G degree. Subsequently, she completed B.Ed. She applied for grant of incentive increment and two incentives for acquiring higher education was considered by the department and her salary was fixed from 16.12.2013 by the Assistant Elementary Educational Officer. The petitioner had completed her 20 years of service in October 2019 and hence, she is entitled for selection grade pay. The petitioner made an application through proper channel for selection grade and the same was forwarded to the



W.P(MD)No.1044 of 2021

2nd respondent, who in turn had forwarded the same to the 1st respondent for necessary approval. While so, the impugned proceedings, dated 03.11.2020 came to be passed returning the petitioner's proposal for selection grade stating that she has completed her Bachelor and Master degree in Commerce, for which she is not entitled for incentive increment. That apart, an order of recovery of whatever incentive granted to her was also passed in the same order. The 1st respondent relying on the proceedings of the Director of Elementary Education, dated 24.08.2016 had withdrawn the incentive which was granted as early as in the year 2013. Hence, challenging the impugned proceedings, this writ petition came to be passed.

3. The learned counsel for the petitioner submitted that the order of recovery came to be passed in the year 2020 i.e., after 5 years from the date of grant of incentive increment in the year 2013. In view of the order passed by the Hon'ble Supreme Court of India reported in **(2015) 4 SCC 334 State of Punjab and Haryana Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334** such an exercise is not permissible and pressed for allowing the writ petition. He further submitted unless and until the recovery proceedings are set aside, the respondents will not sanction her selection grade pay as well.



W.P(MD)No.1044 of 2021

WEB COPY

4. The learned Additional Government Pleader has filed a counter affidavit and submitted that G.O.Ms.No.907, P & AR (FR II) department, dated 17.09.1986 has mandated that higher qualification should be with reference to the area of specialization instead of in any subject. In such cases, the incentive increment cannot be granted. Even in the case on hand, the petitioner had obtained higher education in the subject of Commerce which do not serve any purpose in imparting education to the children of the Middle School where the subject of Commerce is not included in the curriculum. Hence, the petitioner is not entitled for incentive increment at all. He also relied upon the order passed by this Court in W.P(MD)No.8637 of 2016, dated 19.05.2022 and the order passed by this Court in W.A(MD)No.910 of 2022, dated 24.08.2022, wherein this Court has negated the request for the grant of incentive increment by the teachers who have acquired higher qualification which are unrelated to the curriculum imparted to the school students. On that basis, he pressed for dismissal of the writ petition.

5. Heard the learned counsels on either side and perused the materials available on record.



W.P(MD)No.1044 of 2021

6. No doubt, the petitioner had acquired higher qualification even before 2013 and she was sanctioned with grant of 2 incentive increment for acquiring higher qualification as early as in the year 2013. After a passage of more than 5 years, the impugned order of recovery of incentive increment, dated 02.11.2020 came to be passed. The case in hand is no more *res integra*. The Hon'ble Apex Court in the case of ***B.Radhakrishnan Vs. The State of Tamil Nadu & Others reported in 2015 (17) SCC 507*** has dealt with a case of incentive increment and the relevant portion of which is extracted as follows:

15. In somewhat similar facts, a Bench of three Judges of this Court in [Shyam Babu Verma's](#) case had issued a direction against the Government not to make recovery of any excess payment in relation to the money which was already paid to the employees concerned because it was noticed that the excess payments were not made to the employees concerned on account of any fault on their part. This is what was held in para 11 in Shyam Babu Verma case,

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the



W.P(MD)No.1044 of 2021

WEB COPY

fault of the respondents, the petitioners being in no way responsible for the same.”

7. The Finance (Pension) Department of the Government of Tamil Nadu in G.O.Ms.No.286, dated 28.08.2018 has passed orders relating to recovery of excess payment made to employees / pensioners / family pensioners. Clause (3) (iii) of the same mandates that recovery from employees, when the excess payment has been made for a period more than five years, in such cases the order of recovery would be impermissible in law. In view of the said mandate, the impugned order of recovery passed by the respondents after a period of 5 years from the date of grant of incentive increment i.e., which was granted as early as in the year 2013 is impermissible. That apart, fully in consonance with the order passed by the Hon'ble Apex Court discussed supra, even in the instance case, the incentive increment has been granted to the petitioner by the appropriate authorities and thereafter, the impugned order came to be passed on the guise of having made excess payment for no fault on the part of the employee.

8. In view of the same, the impugned order to recover the incentive granted for higher qualification in Clause No.IV in the said order is hereby



W.P(MD)No.1044 of 2021

WEB COPY

quashed and consequently, the respondents are directed to grant selection grade pay to the petitioner. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of copy of this order.

9. Accordingly, this Writ Petition stands allowed. No costs.

10.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

gbg

To

1.The District Educational Officer,
Tuticorin,
Tuticorin District.

2.The Block Educational Officer,
Karunkulam,
Tuticorin District.



WEB COPY



W.P(MD)No.1044 of 2021

L.VICTORIA GOWRI, J.

gbg

W.P(MD)No.1044 of 2021

10.01.2024