



**W.P(MD)No.3976 of 2022**

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P(MD)No.3976 of 2022**  
**and**  
**W.M.P(MD)Nos.3414 & 21786 of 2022**

M.A.Michael

... Petitioner

Vs.

1.The District Educational Officer,  
Aranthangi,  
Pudukottai District.

2.The Block Educational Officer,  
Thiruvarangulam Union,  
Pudukottai District.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order of the second respondent in Na.Ka.No.1629/A1/2020, dated 20.01.2021 and quash the same and pass such further or other as this Court.

For Petitioner : Mr.T.Pon Ramkumar  
For Respondents : Mr.N.Ramesh Arumugam  
Government Advocate



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**ORDER**

The present writ petition has been filed to quash the order, dated 20.01.2021 passed by the second respondent.

2. The case of the petitioner is that the petitioner was appointed as Secondary Grade Teacher. The petitioner has obtained prior permission from the respondents and obtained a B.Ed., degree. Thereafter, the petitioner has also obtained permission from the respondents to pursue M.A., degree and passed. Pursuant to the same, respondents herein have awarded incentive increments for M.A., and B.Ed., degree. However, by virtue of the impugned order of the second respondent, cancelled the incentive increments granted to the petitioner that petitioner did simultaneous degree and directed to recover the excess amount. Aggrieved by the same, the present writ petition has been filed.

3. The learned Counsel appearing for the petitioner submitted that the petitioner has completed B.Ed., and M.A., degree through correspondence course simultaneously. The permission was granted for M.A., degree on 18.08.2011 by the second respondent and for B.Ed., degree the permission was



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granted on 13.02.2012 by the second respondent. The incentive increment was given for B.Ed., degree with effect from January 2012 vide proceedings of the second respondent, dated 27.10.2014 and in regard to M.A., Tamil degree with effect from 29.05.2014 vide proceeding of the second respondent, dated 08.07.2016. Thereafter, the impugned order was passed on 20.01.2021 for recovery of the incentive increment which was already granted to the petitioner in regard to M.A., Tamil which was granted in the year 08.07.2016.

4. To support the contention of the learned Counsel appearing for the petitioner, he has relied upon the following judgments:

***(i) Godwin Vedanayagam Rajkumar Vs. The Headmaster, Government Boys Higher Secondary School, Madurai and others*** reported in ***CDJ 2021 MHC 173 and***

***(ii) State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in ***2015 (4) SCC 334.***

5. The learned Counsel appearing for the petitioner relied on the order passed in a similar writ petition by this Court in W.P(MD)No.12435 of 2019, dated 09.02.2022, wherein, the learned Single Judge has followed the judgment



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of the Hon'ble Division Bench of this Court in ***T.Godwin Vedanayagam Rajkumar Vs. The Headmaster, Government Boys Higher Secondary School, Madurai and others*** reported in ***CDJ 2021 MHC 173***, wherein, it has been held that simultaneous degree are not valid but however, the fact remains that the petitioner was working in Clause-III post and the increment was granted by accepting the simultaneous degree. Though the simultaneous degree was invalidated by this Court, the amount already paid to the petitioner need not be recovered as he is holding the post falling under Clause-III. Hence, he prays the impugned order is liable to be quashed and writ petition to be allowed.

6. The counter affidavit was filed on behalf of the first respondent on 29.11.2022. The relevant paragraph of the counter affidavit is extracted hereunder and reads as follows:

*11. It is submitted that in view of the discussions made all above, there is no illegality in the impugned order passed against the petitioner herein and further, recovery proceedings is concerned, wrongful payment of excess salary paid to petitioner only due to mis-representation to the petitioner seeking or incentive increments for her M.A., degree. So, there is no false committed initially by the Department. Specifically*



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*the wrongful excess payment cost only on account of Misrepresentation of the petitioner. The Hon'ble Supreme Court as well Hon'ble High Courts repeatedly held that excess payment made on account of misrepresentation of the employee, then recover can be very well made against such an employee. So, the impugned recovery order is very much valid within the scope of law and there is no illegality or infirmity in the order. Hence, the writ petition is liable to be dismissed.*

*12. It is submitted that a full bench of the Madras High Court in W.P.No.2807 of 2014 batch, dated 26.04.2021, while answering the reference made to it on whether two degrees (dual degrees) obtained simultaneously during the same academic year can be considered for employment, held that there is no obligation on the employer's part to recognise such degrees unless a specific direction is issued by the UGC in this regard. Observing that the issue of whether the students can be permitted to pursue dual degree courses simultaneously in the same academic year has been vexed with the UGC for several years, the full bench comprising Justice V Bharathidasan, Justice M.Dhandapani and Justice P.T.Asha held, "indisputably, most of the students obtain their second degree through distance education and students are not permitted to undergo a second-degree programme formally in the same academic year". "As of now, the UGC is not recognised pursuing dual degree courses*



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*simultaneously during the same academic year. Therefore, till dual degree courses are recognised by the UGC, such degrees conferred by the universities cannot be construed as per the provisions of the UGC Act."*

7. The learned Government Advocate appearing for the respondents submitted the incentive increment was granted for obtaining M.A., Tamil degree vide proceedings of the second respondent in Na.Ka.No.640/A1/2016, dated 08.07.2016, in which, there is a Clause that if any mistake is done in regard to fixation of the incentive increment or if it is found in the audit inspection, the same will be recovered from the concerned person by a single payment and the same could be deposited in the Government account.

8. The learned Government Advocate appearing for the respondents further submitted that the impugned order has been passed within a period of five years (i.e.,) the order granting incentive increment was issued on 08.07.2016 and the recovery order was passed on 20.01.2021. Hence, it is within a period of five years.



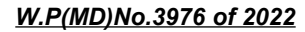
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9. Heard both sides and perused the materials available on record.

10. In the case on hand, the incentive increment was granted to the petitioner on 08.07.2016 and the impugned order of recovery is issued on 20.01.2021. As per the orders, the learned Counsel relied on the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in **2015 (4) SCC 334**. The relevant paragraph of the judgment is extracted hereunder and reads as follows:

*"12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, wherein this Court recorded the following observation in paragraph 58: (SCC p.491)*

*"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Ganga Ram v. Director, B.J. Akkara v. Govt. of India, Purshottam Lal Das v. State*



*(emphasis supplied)"*

(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*



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*outweigh the equitable balance of the employer's right to recover."*

**11.** According to which, where payments have been mistakenly made by the employer in excess of their entitlement, the recovery from the employees belonging to Clause-III and IV would be impermissible in law. The main contention of the learned Government Advocate appearing for the respondents is that the impugned order of recovery is issued within a period of five years and the judgment of the Hon'ble Supreme Court of India is not applicable to the present case, since in Clause-(iii) says recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued but in the case on hand, the recovery order is issued within a period of five years.

**12.** The learned Government Advocate appearing for the respondents further submitted that in regard to recovery proceedings is concerned, the wrongful payment of excess salary paid to the petitioner is only due to the misrepresentation of the petitioner seeking for incentive increment for a M.A., degree. The above contention of the learned Government Advocate appearing



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for the respondents is un-sustainable for the reason there is no misrepresentation on the part of the petitioner. Even assuming there is misrepresentation, the respondent authorities have to take action immediately by deducting the mistake which has happened. But in this case, the incentive increment was paid for nearly 4 1/2 years from 08.07.2016 to 20.01.2021. The second respondent has to taken action against the concerned officer, who is responsible for granting incentive increment mistakenly and for which the petitioner cannot be held responsible, since there is no fault on his part.

13. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in **2015 (4) SCC 334** and following the order of the learned Single Judge, the order passed by the second respondent in Na.Ka.No.1629/A1/2020, dated 20.01.2021 is liable to be quashed and accordingly, the same is quashed.



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**14.** In the result, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

**24.10.2024**

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

To

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**J.SATHYA NARAYANA PRASAD, J.**

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