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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.10502 of 2023

and

W.M.P(MD)Nos.9332 & 11746 of 2023

B.Vasanthalatha

... Petitioner

Vs.

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The District Educational Officer(Elementary),
Kumbakonam Education District,
Thanjavur District – 612 001.

3.The Block Educational Officer,
Kumbakonam Block,
Thanjavur District – 612 001.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records relating to the impugned order issued by the 3rd respondent in Na.Ka.No.765/A1/2020, dated 28.02.2023 with enclosure and to quash the same.

For Petitioner : Mr.F.Deepak

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader



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ORDER

The instant writ petition has been filed by a Secondary Grade Teacher, challenging the order of recovery passed by the third respondent herein on 28.02.2023, wherein two incentive increments granted to the writ petitioner were cancelled and order of recovery have been passed.

2.The petitioner herein joined as Secondary Grade Teacher on 15.07.1988 with Diploma in Teacher Education qualification. The petitioner has acquired M.Com degree on 04.10.2006 and B.E.d degree in March 2009. Based upon the M.Com degree and B.Ed degree, two incentive increments were conferred upon the writ petitioner on 29.03.2009.

3.Based upon the audit objection raised by the concerned department, the instant impugned order has been passed on 28.02.2023, seeking to cancel the incentive increments granted to the writ petitioner w.e.f.29.03.2009. Challenging the said order, the present writ petition has been filed.

4.According to the learned Counsel appearing for the writ petitioner, the petitioner having acquired higher qualification, was granted incentive increments. Therefore, this incentive increment was based upon the G.O.Ms.No.



134, School Education(G-2) Department, dated 15.06.2007, and therefore, the incentive increments cannot be cancelled or recovered from the writ petitioner.

5.Per contra, the learned Additional Government Pleader appearing for the respondents relying upon the counter had contended that unless the higher education acquired by the writ petitioner is in anyway connected with the subject for which the petitioner is taking classes, the question of granting incentive increments would not arise. He relied upon Paragraph No.8 of the counter. Hence, he prayed for dismissal of the writ petition.

6.A perusal of the documents annexed to the writ petition reveal that the petitioner has been granted two incentive increments based upon his acquisition of M.Com degree and B.Ed. Degree, w.e.f.29.03.2009. Considering the fact that the petitioner is a Secondary Grade Teacher, the petitioner would not be eligible for any incentive increments for acquiring M.Com degree, in view of the fact that the petitioner cannot take classes in the subject of commerce to the students either in the Elementary School or in the High School. In such circumstances, the audit objection raised by the concerned department and the order impugned in the writ petition have to be sustained with regard to grant of incentive increments for M.Com degree.



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7.However, B.Ed degree acquired by the writ petitioner in March 2009 is eligible, for incentive increments. The authorities were not right in cancelling the incentive increments for the above said B.Ed degree. This fact is also admitted in paragraph No.8 of the counter filed by the respondent herein.

8.In view of the above said facts, the order impugned in the writ petition is partly set aside with regard to the cancellation of the incentive increments for acquiring B.Ed., degree. However, the order is confirmed with regard to the cancellation of incentive increments for acquisition of M.Com., degree. Considering the fact that the petitioner is receiving incentive increments for M.Com., degree from the year 2009 onwards for more than 5 years, in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Others etc. Vs. Rafiq Masih(white washer) etc.*** in ***Civil Appeal No.11527 of 2024***, the recovery shall not be effected. However, the authorities are at liberty to refix the pay scale of the writ petitioner.



9. In the result, this writ petition is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are also closed.

01.10.2024

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

To

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R.VIJAYAKUMAR, J.

RJR

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