



W.A(MD)No.1235 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.1235 of 2024
and
C.M.P(MD)No.9476 of 2024**

- 1.The Secretary to Government,
Department of Health and Family Welfare,
Fort St. George,
Chennai – 600 009.
 - 2.The Director of Public Health and Preventive Medicine,
No.359, DMS Complex,
Anna Salai,
Teynampet,
Chennai – 6.
 - 3.The Deputy Director of Health Services,
Sivagangai. ... Appellants/Respondents
- vs.
- P.Ekanathan ... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 05.12.2023 made in W.P(MD)No.24024 of 2022.



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For Appellants

: Mr.N.Satheesh Kumar
Additional Government Pleader

For Respondent

: Mr.V.P.Rajan

JUDGMENT

[Judgment of the Court was made by R.SURESH KUMAR, J.)

This intra Court Appeal has been directed against the order passed by the Writ Court, dated 05.12.2023 made in W.P(MD)No.24024 of 2022.

2.That the respondent/writ petitioner had been working in the appellant Department and he reached the position of Junior Entomologist. He had already acquired a higher qualification, namely M.Sc Zoology, in the year 2002.

3.With that qualification when he was working as a Junior Entomologist, the Government had come forward to issue a G.O in G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, under which, those who acquired higher qualification working in various Departments of the State upto the level of second level

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officers would be eligible and entitled to seek for advance incentive increment from the date of the issuance of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010.

4.Though the respondent/writ petitioner was working as Junior Entomologist, since he acquired the higher qualification of M.Sc Zoology in the year 2002 itself, therefore, on the date when G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, came into effect from 05.07.2010 already he has become eligible to seek for advance incentive increment atleast from the date of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010.

5.In fact, the said benefit accrued arising out of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010 had been conferred on the respondent/writ petitioner with effect from 18.11.2011.



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6.However, such a benefit of advance incentive increment conferred on the respondent/writ petitioner has subsequently been found to be an excess payment, therefore, a recovery order was passed on 30.09.2022 for the recovery of a sum of Rs.6,20,409/-. Challenging the said order, the respondent/writ petitioner moved the writ Court and filed the said Writ Petition to quash the said order.

7.The learned writ Court, who heard the said Writ Petition, has allowed the same. As against which, the present appeal has been directed.

8.Heard Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the appellants, who would canvass the point that the import of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, if it is looked into, it can only make the persons eligible to claim such advance incentive increment provided if the employee is a second level officer of the Department concerned.

9. In other words, each Department will be headed by an officer may be a Director or any equal post and the person, who is in the next level of that post alone would be entitled to get such a benefit. When that being



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the import of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, the respondent/writ petitioner being the Junior Entomologist and the further promotional post is the District Entomologist, which may only be considered as a second level post and those persons, who are holding second level post alone since would be entitled to get such a benefit under G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, the petitioner is not entitled to claim the same.

10. Therefore, the learned Additional Government Pleader would submit that the payment of advance incentive increment paid to the respondent/writ petitioner with effect from 18.11.2011 even though he was holding the post of Junior Entomologist, which is not a second level officer post, such a payment made to the respondent/writ petitioner to the tune of Rs.6,20,409/- was found to be an excess payment, therefore, in order to recover the same, the order impugned before the writ Court, dated 30.09.2022 was issued, hence it ought not to have been interfered with by the learned Judge, therefore, the learned Additional Government Pleader seeks indulgence of this Court against the impugned order.



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11.We have also heard Mr.V.P.Rajan, learned counsel appearing for the respondent/writ petitioner.

12.The import of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, reads thus:

In G.O.(Ms) No.1159, Personnel and Administrative Reforms (FR II) Department dated 21.11.1984, after paragraph 3, the following paragraph shall be inserted as para 4, namely:-

*4.(i) The scheme of sanction of advance increments is applicable to officers upto and inclusive of second level officers below the Heads of Departments;

(ii) If the special qualification is prescribed as one of the requisite qualifications for appointment to any post or where the scale of pay for such post is prescribed taking into account the special qualification for appointment to any post or where the scale of pay for such post is prescribed, taking into account the special qualification, the scheme will not be applicable to those acquiring the special qualification;

(iii) Where the Government have spent money on any officer by giving him study leave and allowances or have treated the study period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other than Account Test for Sub-ordinate Officers Part-I is made essential for further promotion, he is not entitled to the benefit;

(iv) In respect of those for whom the Post-Graduate qualification is made essential for further promotion, they are also not entitled for the benefit.

2) The paragraphs 4, 5 and 6 shall be renumbered as paragraphs 5, 6 and 7 respectively.

(BY ORDER OF THE GOVERNOR)

K.N. VENKATARAMANAN
SECRETARY TO GOVERNMENT.



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13.As per the said amendment in clause 4(i), it has been made very clear that the scheme of sanction of advance increment is applicable to officers upto and inclusive of second level officers below the Heads of Departments.

14.It means that second level officer below the Heads of the Department would also be eligible to seek such a benefit, however, it has been wrongly understood by the Department that only second level officers are eligible to get the benefit. However, the language used is 'upto and inclusive of'. 'Upto and inclusive of' means the officers or staff working in various capacities upto second level officers which include a second level officers are entitled to get such a benefit arising out of G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010. This has been made clear in clause 4(ii) of the said G.O. also. Therefore, the interpretation sought to be given by the Department of the amendment to the earlier G.O under G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, with an understanding that such a benefit of advance incentive increment would be extended only to second level officer is not in consonance with G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department,



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dated 05.07.2010, as it has been made very clear that all other people upto the level of second level officers are eligible or entitled to seek for such a benefit.

15.When that being so, the respondent/writ petitioner being a Junior Entomologist certainly an officer in between ie., upto the level of second level officers, as second level officer according to the learned Additional Government Pleader, in the Department, is the District Entomologist.

16.Therefore, the respondent/writ petitioner is also to be included in the list of beneficiaries to be conferred with the said benefit of advance incentive increments, hence such a benefit conferred to him with effect from 18.11.2011 ie., well after G.O.(Ms)No.97, Personnel and Administrative Reforms (FR.IV) Department, dated 05.07.2010, was only in consonance with the import of the said G.O, therefore, such payment of advance incentive increment paid to the respondent/writ petitioner cannot be said to be a wrong payment or excessive payment. Therefore, the order, dated 30.09.2022 seeking for recovery of a sum of Rs.6,20,409/- from the respondent/writ petitioner is palpably wrong. Therefore, we do not find any



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reason to interfere with the order of the learned Judge, which is impugned herein.

17.Resultantly, this Writ Appeal fails. Hence, it is dismissed. By virtue of this order, any service benefits including DCRG or part of DCRG withheld by the employer/appellant Department, shall be paid to the respondent/writ petitioner, within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
22.07.2024

NCC : Yes / No
Index : Yes / No
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To

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Department of Health and Family Welfare,
Fort St. George,
Chennai – 600 009.
- 2.The Director of Public Health and Preventive Medicine,
No.359, DMS Complex,
Anna Salai,
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Sivagangai.



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R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

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ORDER MADE IN
W.A(MD)No.1235 of 2024

DATED : 22.07.2024

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