



W.P.(MD).No.20352 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20352 of 2024

and

W.M.P(MD) Nos.17256 and 17258 of 2024

C.Jeyaraj

Vs.

... Petitioner

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Director of School Education,
Office of the Director of School Education,
DPI Complex, 17, College Road,
Nungambakkam,
Chennai – 600 008.
3. The Joint Director of School Education (Personnel),
Office of the Joint Director of School Education,
DPI Complex,
17, College Road,
Nungambakkam,
Chennai – 600 008.



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4. The Joint Director of School Education
(Higher Secondary)
Office of the Joint Director of School Education,
DPI Complex,
17, College Road,
Nungambakkam, Chennai – 600 008.
5. The Chief Education Officer,
Thanjavur,
Thanjavur District.
6. The District Education Officer,
(Secondary)
Thanjavur, Thanjavur District.
7. The Headmaster,
Government Higher Secondary School,
Thuvarankurichi – 614 613,
Pattukottai Taluk,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the sixth respondent in ஓ.மு.எண்: 09388/ஆ5/2023, dated 23.05.2024 and quash the same as illegal and consequently directing the respondents to continue to disburse the two existing incentive increments to the petitioner without any reduction or recovery.

For Petitioner	: Mr.B.N.Raja Mohamed
For Respondents	: Mr.J.Ashok Additional Government Pleader



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ORDER

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The instant writ petition has been filed by a Physical Education Teacher working in the seventh respondent School, challenging the order dated 23.05.2024, wherein the incentive increment granted to him for acquiring the B.P.Ed., degree has been cancelled and the amount is sought to be recovered.

2. The petitioner was appointed as Physical Education Teacher in a Higher Secondary School on 24.11.2012. The petitioner was possessing a degree in Bachelor of Physical Education and Sports (B.P.E.S.,) as well as the Degree in Bachelor of Physical Education (B.P.Ed.), at the time of appointment. These facts are not in dispute.

3. By way of proceedings, dated 09.12.2016, the petitioner was conferred with incentive increment for possessing B.P.Ed., degree with effect from the date of his appointment, namely, on 24.11.2012. Under the impugned order, the respondents are of the opinion that since B.P.Ed., degree is the basic required qualification for being appointed as a Physical Education Teacher, incentive increment cannot be granted for acquiring the said basic qualification.



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4. A perusal of G.O.(Ms).No.177, School Education 5(2) Department, dated 13.10.2016, reveals that possessing either B.P.Ed or BPES or BMS is a basic mandatory required qualification for being appointed as a Physical Education Teacher. Therefore, the authorities were not right in granting incentive increment for possessing B.P.Ed., degree from the date of his appointment.

5. In view of the above said facts, this Court is not inclined to interfere in the order of cancellation of the incentive increment granted to the writ petitioner for possessing B.P.Ed., degree.

6. The learned counsel appearing for the writ petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in **2015 (4) SCC 334 (State of Punjab Vs.Rafiq Masih)** (white washer's case) and contended that he is receiving the incentive increment from November 2012 onwards and by way of proceedings in May 2024, after a period of twelve years, the entire incentive increment is sought to be recovered. In view of the judgment of the Hon'ble Supreme Court, any excess payment cannot be recovered if it has been made after a period of five years.



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7. In view of the above said judgment of the Hon'ble Supreme Court, this Court is of the considered opinion that the recovery orders could be restricted from June 2019 onwards. The order impugned in the writ petition stands partly set aside and the respondents are directed not to recover the incentive increment up to May 2019. Thereafter, if any incentive increment is paid from June 2019, the same may be recovered from the salary of the writ petitioner by way of installments.

8. With the above said observations, this Writ Petition stands partly allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

12.09.2024

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

1. The Secretary,
Department of School Education,
Secretariat, Fort St.George,
Chennai – 600 009.

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