



W.P.(MD)No.17531 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.17531 of 2024 &
W.M.P.(MD)No.15076 of 2024

J.R.Murugadoss

... Petitioner

vs.

The Block Educational Officer,
Bodinayakanur, Theni District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records relating to the impugned order dated 11.03.2024 in Na.Ka.1518/A4/2023 and quash the same as illegal and consequently direct the respondent to pay the petitioner the salary without making any revision on the scale of pay.

For Petitioner : Mr.M.Jerin Mathew

For Respondents : Mr.M.Siddharthan
Additional Government Pleader



WEB COPY



W.P.(MD)No.17531 of 2024

ORDER

Heard Mr.M.Jerin Mathew, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondent.

2. The petitioner has filed this writ petition seeking to quash the impugned order of the respondent dated 11.03.2024 in Na.Ka. 1518/A4/2023 and consequently to direct the respondent to pay him the salary without making any revision on the scale of pay.

3. The petitioner who has been given with incentive increment for his higher qualification in M.Com. Degree has been given with the impugned order dated 11.03.2024, wherein, it is stated that the incentive increment has been given to the petitioner on a wrong premise that his M.Com. Degree is eligible for sanction of incentive increment. It appears that the impugned order has been issued consequent to the audit objection made by the Regional Audit Officer.



W.P.(MD)No.17531 of 2024

WEB COPY

4. Mr.M.Jerin Mathew, learned counsel appearing for the petitioner submitted that the petitioner could not challenge the audit objection because the copy of the same was not served upon him.

5. In any case, the respondents ought to have issued notice to the petitioner before issuing the impugned order. The petitioner has not suppressed any information and mislead the respondent to sanction the incentive increment in the year 2016. It appears from the worksheet that the respondent had issued the impugned order to recover the incentive increment allowed to the petitioner right from the year 2016 to the year 2023. Obviously, the recovery order has been issued after a period of five years from the initial date from which the petitioner was allowed incentive increment. The above recovery, no doubt, would be impermissible recovery enlisted by the Apex Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696***. The essential part of the above Judgment is extracted hereunder.



WEB COPY

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (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 outweigh the equitable balance of the employer's right to recover. '"*



W.P.(MD)No.17531 of 2024

WEB COPY

6. As the petitioner's case fall under clause (iii) of the above Judgment, the petitioner is entitled to the benefit of the above Judgment and hence, the order of recovery is liable to be set aside.

7. So far as the mistaken payment and mistaken fixation of pay on the ground that that the petitioner was wrongly given with incentive increment is concerned, the petitioner has to be given with show cause notice and an opportunity to make his submissions before passing an order in this regard.

8. In fact, the order of recovery itself can be treated as show cause notice and the petitioner can be given with liberty to give explanation to the respondent within a specified time.

9. In view of the above observations, the writ petition is **disposed of** and the impugned order of the respondent dated 11.03.2024 in Na.Ka.1518/A4/2023 is ordered to be treated as show cause notice and the petitioner is at liberty to give explanation to the respondent within a



W.P.(MD)No.17531 of 2024

WEB COPY

period of two weeks from the date of receipt of a copy of this order. The respondents further directed to serve a copy of the audit objection to the petitioner forthwith in order to enable him to make effective submissions. On receipt of the explanation from the petitioner, the respondent can consider the same and pass appropriate orders so far as the mistaken payment and mistaken fixation of pay is concerned. However, it is made clear that since the petitioner falls under clause (iii) of the ***White Washer's case***, recovery is impermissible. No costs. Consequently, connected Miscellaneous Petition is closed.

30.07.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
mbi

To

The Block Educational Officer,
Bodinayakanur, Theni District.



WEB COPY



W.P.(MD)No.17531 of 2024

R.N.MANJULA, J.

mbi

W.P.(MD)No.17531 of 2024

30.07.2024