



W.A(MD)No.470 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.04.2024**

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

and

THE HONOURABLE MR.JUSTICE **P.VADAMALAI**

W.A.MD)No.470 of 2018
and C.M.P.(MD)No.2810 of 2018

1.The District Elementary Educational Officer,
Tuticorin

2.The Additional Assistant Elementary Educational Officer,
Tuticorin ... Appellants/Respondents 1 & 2

Vs.

1.Dhavamani ...1st Respondent/Writ Petitioner

2.The Secretary,
BMC Primary School,
Miller Puram,
Tuticorin - 2nd Respondent/3rd Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as
against the order passed by this Court dated 08.01.2018 in W.P(MD)No.
4315 of 2010 on the file of this Court.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For R1 : Mr.G.Karthik
for M/s. T.Lajapathi Roy Associates



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J U D G M E N T

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[Judgment was delivered by **N.SESHASAYEE, J.**]

This appeal is filed challenging an order of the learned single Judge dated 08.01.2018 in WP(MD)No.4315 of 2010.

2.1 The issue involved in this case is short: The appellant possessed a degree was appointed as a Secondary Grade Teacher. The minimum qualification for being appointed as a Secondary Grade Teacher is a pass in the 10th Standard and a diploma in Teacher Education. While so, the Government resorted to a method of appointing over qualified candidates for the post of Secondary Grade Teacher essentially to meet the exigency created to meet severe paucity in the cadre of Secondary Grade Teacher. Later, this was done away with vide G.O(Ms.)No.559, Education Department, dated 11.07.1995. This was challenged before this Court unsuccessfully.

2. Pending adjudication on the validity of G.O.(Ms.)No.559, Education Department, dated 11.07.1995, similar appointments were made to the post of the Secondary Grade Teacher pursuant to an order of stay passed by this Court.



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3. Be that as it may, in terms of G.O.(Ms.)No.42, Education Department dated 10.01.1969, the teachers in various categories were given incentive increments for acquiring additional educational qualification. Accordingly, the Secondary Grade Teacher would be entitled to two advance incentive increments for acquiring B.T or B.Ed., Degree and for acquiring M.A or M.Ed., Degrees.

4. As stated earlier, the 1st respondent herein, though a graduate, was appointed as the Secondary Grade Teacher some time in 1992. Since he has acquired a Post Graduation Degree, he claimed he was entitled to receive two advance incentive increments and he was granted the same.

5. While so, the Government came out with G.O(Ms.)No.155, School Education (D2) Department, dated 03.10.2002 by which, any Graduate appointed as Secondary Grade Teacher was held not eligible for receiving two separate advance incentive increments. In terms of G.O(Ms.)No.42, dated 10.01.1969, inasmuch as the 1st respondent was already granted two advance incentive increments, this came to be noted during audit. Immediately, the appellants herein issued notice for



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recovery of the amount which the 1st respondent had received as incentive increment.

6. This is put to challenge in W.P(MDNo.4315 of 2010. When the matter came up before this Court, the learned single Judge placed reliance on the dictum of the Hon'ble Supreme Court of India in the ***State of Punjab Vs. Rafiq Masih*** [(2015 (4) SCCC 334], more specifically relied on paragraph No.18 thereof, which reads as follows:

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law;

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service)

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of



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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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The learned single Judge then proceeded to quote that recovery is impermissible when an employee is superannuated. This order of the learned single Judge is under challenge.

7. Without getting into the borne of contention as to the applicability of the dictum of the Hon'ble Supreme Court in **Rafiq Masih's case**, it has to be held on facts that the 1st respondent is still entitled to receive two incentive increments for acquiring M.Ed., Degree even when he was serving as the Secondary Grade Teacher, which keeps the case of the respondent outside the operative ambit of G.O.155. This aspect on facts can be read either as an independent line of reasoning of the learned



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sing Judge or supplementary to the same. In effect, this Court does not find any reasoning to interfere with the order of the learned single Judge.

8. In fine, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

15.04.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

CM

To

1.The District Elementary Educational Officer,
Tuticorin

2.The Additional Assistant Elementary Educational Officer,
Tuticorin



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and
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