



WA(MD)No.1874 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2024

CORAM :

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**WA(MD)No.1874 of 2024
and
CMP(MD)No.14114 of 2024**

1. The Director of Elementary Education,
DPI Campus,
Chennai – 6.

2. The District Educational Officer (Elementary),
Kovilpatti,
Thoothukudi District.

3. The Block Educational Officer,
Kovilpatti,
Thoothukudi District.

... Appellants

vs.

1. S.Rajeswari

2. The Correspondent
R.C.Primary School,
Kovilpatti,
Thoothukudi District.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 04.07.2024 made in W.P(MD)No.14762 of 2024.



WEB COPY



WA(MD)No.1874 of 2024

For Appellants : Mr.J.Ashok, Additional Government Pleader
For R1 : Mr.T.Aswin Rajasimman

JUDGMENT

(Judgment of the Court was made by **M.S.RAMESH, J.**)

The 1st respondent / writ petitioner had completed her M.A degree in Open University in the year 1999. Through G.O.Ms.No.118, dated 10.07.2013, the Government had cancelled the sanction of incentive increment to persons who have acquired M.A degree through Open Universities. After the passing of the said G.O., the petitioner herein, had made an application in the year 2014, seeking for incentive increment which was granted on 10.12.2014. After disbursing the incentive increment for over a period of ten years, the grant of incentive increment was cancelled through the order passed on 29.04.2024, which was followed by a consequential recovery order dated 19.06.2024. When these orders were challenged before the Writ Court, the same were set aside, predominantly on the ground that the acquisition of the higher qualification of M.A degree through Open University, was prior to passing of G.O.Ms.No.118, dated 10.07.2013.

2. Two aspects that arose for consideration before the Writ Court were as to whether the writ petitioner would be entitled for continuance of the



WA(MD)No.1874 of 2024

payment of incentive increment and whether the increments already paid can be recovered.

3. Insofar as the entitlement to continue to receive the incentive increment is concerned, in view of G.O.Ms.No.118, dated 10.07.2013, which imposes a prohibition for disbursement of incentive increment for persons who have acquired M.A degree through Open University and therefore, the writ petitioner would not be entitled for receiving the same after 10.07.2013.

4. The consequential issue that arises for consideration is as to whether the appellants would be entitled to recover the increments already paid? This position is no more *res integra*, since the Hon'ble Supreme Court, in the case of *State of Punjab and others vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334, has clearly held that the excess payments made by the employer, which were not owing to the misrepresentation of the employees, over and above a period of five years, cannot be recovered.

5. The learned Single Judge of this Court, though had set aside the order of recovery, had also interfered with the order cancelling the grant of incentive increment. In our view, the order in the writ petition with regard to recovery, has to be upheld.



WA(MD)No.1874 of 2024

6. Insofar as the cancellation of the grant of incentive increment is concerned, the same cannot be found fault with after 10.07.2013, which is the date of G.O.Ms.No.118. However, since on the date of acquisition of M.A degree by the 1st respondent, G.O.Ms.No.118 was not in force, the grant of incentive increment till 10.07.2013 would be valid.

7. With the above observations, the Writ Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(M.S.R, J.) (A.D.M.C, J.)
28.11.2024

Index : Yes / No
Neutral Citation : Yes / No
bala

To

1. The Director of Elementary Education,
DPI Campus,
Chennai – 6.

2. The District Educational Officer (Elementary),
Kovilpatti,
Thoothukudi District.

3. The Block Educational Officer,
Kovilpatti,
Thoothukudi District.



WEB COPY



WA(MD)No.1874 of 2024

M.S.RAMESH, J.
and
A.D.MARIA CLETE, J.

bala

JUDGMENT MADE IN
WA(MD)No.1874 of 2024
DATED : 28.11.2024