



W.P(MD)No.27033 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.27033 of 2022 and
WMP(MD) No. 2277 of 2023, 21203 & 21206 of 2022

M.Anitha

... Petitioner

Vs

- 1.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 2.The Headmaster/Headmistress,
Government Higher Secondary School,
Melayakudi,
Ramanathapuram District.
- 3.The Regional Accounts Officer (Audit),
School Education Department,
Madurai Region,
Madurai.

...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 orders vide



W.P(MD)No.27033 of 2022

Na.Ka.No.22/2022, dated 15.02.2022 and its consequential reminder letter dated 19-11-2022 both issued by this 2nd respondent and quash the same as null and void, and against law and there by direct the 2nd respondent not to cancel the incentive increment already permitted to the petitioner from 1/2017 and not to recover the already paid the amount as incentive increment to the petitioner.

For Petitioner : Mr.F.X.Eugene
For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

The petitioner is a P.E.T Teacher, working in Government Girls Higher Secondary School in Melaukudi, Ramanathapuram District. According to the petitioner, her original appointment was with the qualification of C.P.Ed. Subsequently, the petitioner has passed P.G.Diploma in Yoga, for which, she was provided with second incentive increment from May 2017. The petitioner has approached this Court challenging the communication of the Head Master, Government Higher Secondary School, Melayakudi, dated 15.02.2022, in and by



W.P(MD)No.27033 of 2022

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which, the petitioner was directed to remit back the amount, which she has received as second incentive increment as per G.O.Ms.No.177, School Education Department, dated 13.10.2016. This communication has been made based on the objections raised by the Regional Accounts Officer (Audit), School Education Department.

2.The learned Counsel appearing for the petitioner submits that this petitioner is entitled for the increment as per G.O.Ms.No.177, School Education Department, dated 13.10.2016 and she was granted with incentive increment in the year 2017. The increment, which was provided to this petitioner from the month of May, 2017 is ordered to be recovered in the year 2022, after a period of five years and that too, without affording any opportunity of hearing, based on the audit objection. He further submits that this petitioner has acquired B.Ed qualification and therefore she was provided with first incentive increment and thereafter she has also completed PG Diploma in Yoga from a recognized University and she is also entitled for the second incentive increment, as per the aforesaid Government Order. The



W.P(MD)No.27033 of 2022

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learned counsel by referring to *State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, reported in (2015) 4 SCC 334 submits that the impugned order of recovery has been made after a long time and therefore, it is liable to be set aside.

3.The learned Special Government Pleader appearing for the respondents by referring to paragraph 7(1)(a) of G.O.Ms.No.177, School Education Department, dated 13.10.2016 submits that this petitioner was appointed as a Physical Education Teacher, based on the basic qualification of Certificate in Physical Education. In the event, if a person who has been appointed with a basic qualification of certificate in Physical Education, then he/she is entitled for an incentive increment, if he/she possess B.T or B.Ed or B.PED or BPES or BMS. Incentive increment for PG Diploma in Yoga by a recognized University is eligible to the persons, provided if he/she has completed B.Ed qualification prior to issuance of G.O.Ms.No.624, School Education Department, dated 13.07.1992. According to the learned Special Government Pleader, this petitioner has obtained B.Ed degree



W.P(MD)No.27033 of 2022

only on 04.02.2013, based on which, this petitioner was provided with an incentive increment. For completion of PG Diploma in Yoga on 31.10.2017, she cannot claim second incentive increment, based on G.O.Ms.No.177, School Education Department, dated 13.10.2016, since she has completed his B.Ed degree only in the year 2013, that is after issuance of G.O.Ms.No.624, School Education Department, dated 13.07.1992. Therefore, according to the learned Special Government Pleader, the mistake committed by the second respondent School by granting second incentive increment to the petitioner has been pointed out by the third respondent during the audit and accordingly, the impugned order of recovery came to be passed. He further submits that the judgment referred by the learned counsel for the petitioner *State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, reported in (2015) 4 SCC 334 is not applicable to the Physical Education Teachers and it is only for the benefit of Group D employees.

4.This Court considered the rival submissions made and also perused the materials placed on record.



W.P(MD)No.27033 of 2022

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5.This petitioner was sanctioned with the second incentive increment as per G.O.Ms.No.177, School Education Department, dated 13.10.2016. However, on audit objection, it was ordered to be recovered from this petitioner by the impugned order. The learned counsel for the petitioner has relied on the aforesaid Government Order that he is entitled for the second incentive increment, whereas, the learned Special Government Pleader has also referred the same Government Order and raised his objection that in the aforesaid Government order, it is clarified that incentive increment for PG Diploma in Yoga would be provided, if the Physical Education Teacher is completed his B.Ed qualification prior to issuance of G.O.Ms.No. 624, School Education Department, dated 13.07.1992. However, in the present case, this petitioner has obtained B.Ed degree only on 04.02.2013. For better appreciation, the relevant paragraph from the above Government Order is extracted as under:-



வ.எண்	வகை	அடிப்படை கல்வித்தகுதி	ஊதிய உயர்வுக்கான உயர்கல்வித்தகுதி
1(அ)	உடற்கல்வி ஆசிரியர் (இடைநிலை ஆசிரியர் பணிநிறை)	Government Teacher's Certificate in Physical Education Lower Grade (or) Higher Grade	1.B.T or B.Ed (அரசாணை நிலை எண் 624, கல்வித்துறை, நாள் 13.07.1992 வெளியிடுவதற்கு முன்னர் தேர்ச்சி பெற்றவர்களுக்கு மட்டும் or B.PED., (or) BPES or BMS ஆகியவற்றில் ஏதேனும் ஒரு கல்வி தகுதிக்கு முதலாவது ஊக்க ஊதிய உயர்வு. 2.M.PED., or MPES or PG Diploma in Yoga by Recognized University (அ) அதற்கு இணையானது இவற்றில் ஏதேனும் ஒரு கல்வித்தகுதிக்கு இரண்டாவது ஊக்க ஊதிய உயர்வு.

6.A specific direction has been given in the afresaid Government Order that those persons, who have acquired B.Ed., qualification, prior to G.O.Ms.No.624, School Education Department, dated 13.07.1992 alone are entitled for second incentive increment for possessing M.PED, MPS and PG Diploma in Yoga. Admittedly, in G.O.(Ms) No.624, dated 13.07.1992, in Clause IV, the Government has instructed that in respect of Physical Education Teachers, incentive increments would be sanctioned in future only in the area of physical



W.P(MD)No.27033 of 2022

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education with a view to upgrade physical training. As per G.O.Ms.No. 177, School Education Department, dated 13.10.2016. the Diploma in Yoga by a recognized University has also been considered for incentive increment, provided, if B.T or B.Ed Course is completed prior to G.O.(Ms) No.624, dated 13.07.1992.

7.In view of the above, this Court is not inclined to interfere with the impugned order. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.12.2024

NCC:Yes/No
Index:Yes
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W.P(MD)No.27033 of 2022

To
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W.P(MD)No.27033 of 2022

B.PUGALENDHI, J.

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(1/2)