

W.P.No.4081 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.4081 of 2022
and WMP.No.4220, 4219 & 16516 of 2022

S. Amaravathi

... Petitioner

Vs.

1. The Commissioner
School Education
DPI Campus,
Chennai 600 006.

2. The District Educational Officer,
Krishnagiri.

3. The Block Educational Officer
Krishnagiri.

4. The Headmaster
Government High School
Pethanappali
Krishnagiri District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India,
to issue Writ of Certiorarified Mandamus to call for the records of the second
respondent in Na.Ka.No.2499/A3/2021 dated 02.02.2022 and quash the same
and consequently direct the respondents to continue to pay the petitioner



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incentive increment for having acquired higher qualification of master's decree
(M.A.Degree).

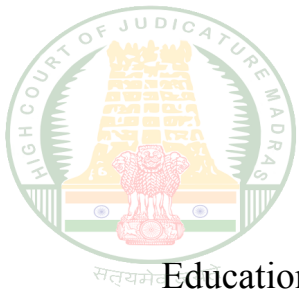
For Petitioner : Mrs.Dakshayani Reddy
Senior Counsel for
Ms.Suneetha

For Respondents : Mr.L.S.M.Hasan Fazil
Additional Government Pleader

ORDER

This writ petition is filed for a Writ of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.No.2499/A3/2021 dated 02.02.2022 and to quash the same and consequently direct the respondents to continue to pay the petitioner incentive increment for having acquired higher qualification of master's decree (M.A.Degree).

2. The petitioner was originally appointed as Secondary Grade teacher on the basis of employment exchange seniority, with effect from 07.10.1996. She was subsequently promoted as BT Assistant with effect from 05.11.2007. At the time of appointment itself the petitioner was qualified with M.A. Degree, and B.Ed. Degree which she obtained from Annamalai University in May 1994 and May 1996 respectively. The petitioner subsequently completed B.A., History in May 2001. While so, the Government issued G.O.Ms.No.307 School



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Education Department, dated 16.12.2000, extending the benefit of incentive increment to those persons who obtained the Masters degree directly without undergoing the UG course. Accordingly, based upon the said Government Order the petitioner was granted with incentive increment from the date of the issuance of the said G.O. i.e, with effect from 15.12.2002 vide proceedings of the third respondent dated 11.04.2001. The petitioner continued to receive the said incentive increment for a period of 21 years. Later, G.O.Ms.No.118 dated 10.07.2013, was passed cancelling G.O.Ms.No.307 dated 15.02.2000. Aggrieved by the cancellation of the incentive increment vide proceedings dated 01.10.2021, the petitioner filed W.P.No.22247 of 2021, and this Court set aside the impugned order holding that the respondents could not recover the amount which was paid for a period of 13 years, between 2000 – 2013. The Court further held that so far as the payment of incentive increment beyond 13 years was concerned the respondents were bound to issue notice to the petitioner, get a reply, consider the same and thereafter take a final decision. Pursuant to the orders of this Court the respondents issued a show cause notice on 23.12.2021, to the petitioner to which she replied on 10.01.2022. According to the petitioner, the impugned order was liable to be quashed as despite the order of this Court, that G.O.Ms.No.118, dated 10.07.2013, was prospective,



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the second respondent vide impugned order applied it retrospectively by directing the petitioner to repay the excess payment with effect from 15.02.2000. Aggrieved by the impugned order, the petitioner filed the above writ petition.

3. The 2nd respondent filed a detailed counter narrating the entire history of the case. The respondents stated that pursuant to the order of this Court in W.P.No.22247 of 2021 dated 21.10.2021, the petitioner was issued a show cause notice, to which she submitted her explanation. After considering the explanation of the petitioner, the impugned order was passed, withdrawing one incentive increment granted to the petitioner for Open University M.A. higher educational qualification, as it was found to be contrary to Government rules. Thereafter the recovery order was issued by the Headmaster, Government High School, Penthanahalli, in Rc.No.228/2021 on 01.10.2021, and the District Educational Officer, Krishnagiri in Rc.No.2499/B1/2021 on 01.02.2022. The respondents stated that as the sanction of the incentive increment was contrary to the Government orders the same was withdrawn. Hence the respondents stated that there were no merits in the writ petition and it was liable to be dismissed.



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4. The learned Senior Counsel appearing for the petitioner submitted that the impugned order was liable to be set aside because the respondent failed to note that G.O.Ms.No.118, dated 10.07.2013, was only prospective in operation. The learned Senior Counsel relied on the Division Bench judgment of this Court in W.A.No.1792 of 2019, in support of the aforesaid submission. The learned counsel further submitted that between 15.12.2000 and 10.07.2013, the parties were governed by G.O.Ms.No.307 School Education Department, dated 15.12.2000 and that G.O.Ms.No.118 did not authorise the respondents to order recovery or re-calculation of incentive increments already granted. Lastly, the learned Senior Counsel submitted that in the order dated 21.10.2021, in W.P.No.22247 of 2021, this Court made it very clear that G.O.Ms.No.118, dated 10.07.2013, was not retrospective and therefore the impugned order based on G.O.Ms.No.118 dated 10.07.2013 was liable to be quashed.

5. The learned Additional Government Pleader appearing for the respondents reiterated the submissions made in the counter affidavit.

6. Heard both sides and perused the materials available on record.



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7. Admittedly the petitioner obtained M.A. degree directly without getting the UG degree. The petitioner was granted incentive increment for obtaining the higher qualification of M.A. degree on the basis of G.O.Ms.No.307 dated 15.02.2000, which permitted grant of incentive increment to persons who obtained M.A. degree directly without obtaining the UG degree. Later, the Government withdrew G.O.Ms.No.307 by issuing G.O.Ms.No.118 dated 10.07.2013. In pursuance of G.O.Ms.No.118 dated 10.07.2013, the 4th respondent passed a recovery order on 01.10.2021, directing the petitioner to refund the excess payment. The petitioner challenged the said order by filing W.P.No.22247 of 2021, and this Court set aside the order with certain directions issued therein. In compliance of the said order, the respondents sent a show cause notice to the petitioner. The petitioner replied and on consideration of same, the impugned order was passed by the 2nd respondent. Challenging the same, the petitioner has filed the above writ petition.

8. This is a second round of litigation. The records reveal that the petitioner earlier filed a writ petition in W.P.No.22247 of 2021, challenging the



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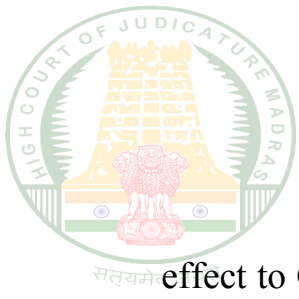
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recovery order dated 01.10.2021, passed on the basis of G.O.Ms.No.118 dated 10.07.2013. This Court by its order dated 22.10.2021 held as follows in para no.9:-

9. Therefore, the impugned order is liable to be quashed and is hereby quashed and the case is remitted back to the respondents to pass appropriate orders after issuing a proper show cause notice to the petitioner within a period of sixty days from the date of receipt of a copy of this order. While issuing show cause notice to the petitioner, the respondents shall ensure demand in the proposed show cause notice is not made by giving retrospective effect to G.O.Ms.No.118, School Education [SE5(2)] Department dated 10.07.2013 has been issued/passed only in the year 2013.

10. It is made clear that the show cause notice should clearly spell out the reasons as to why the incentive increments were granted to the petitioner and the impact there of is to be reversed and why the amount paid to the petitioner after 10.07.2013 should not be recovered from the petitioner”.

9. While passing the above order this Court observed that G.O.Ms.No.118 could not be applied retrospectively. Despite the said observation of this Court, the impugned order was passed giving retrospective



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effect to G.O.Ms.No.118 dated 10.07.2013. Therefore, the impugned order runs counter to the observation of this Court that G.O.Ms.No.118 dated 10.07.2013 cannot be operated retrospectively. At this juncture, it would be relevant to refer to the judgment of the Division Bench of this Court in W.A.No.1792 of 2019 dated 16.10.2020 wherein at paragraph Nos.52 & 53 this court held as follows:-

“52. Further, the Government withdrew the incentive increment vide G.O.Ms.No.118, School Education Department, dated 10.07.2013 only in the year 2013. Between 15.12.2000 and 10.07.2013 both the appellants and the respondents were governed by G.O.Ms.No.307, School Education Department, dated 15.12.2000.

53. Further, G.O.Ms.No.118 has also not authorised the appellants to order for recovery or re-calculation of incentive increments granted earlier to those persons who have already retired. In our view, G.O.Ms.No.118, School Education Department, dated 10.07.2013 also has to be held to be prospective and not retrospective”.

10. It is pertinent to note here that the petitioner was paid the incentive increment for more than 21 years, and it was only on the basis of G.O.Ms.No.118, dated 10.07.2013, that the incentive increment was



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withdrawn, that too, by applying it retrospectively. In my view therefore the impugned order cannot be sustained as it violates the Division Bench order dated 16.10.2020 in W.A.No.1792 of 2019 and order in W.P.No.22247 of 2021.

11. One more reason in support of the unsustainability of the impugned order is that it runs contrary to the law laid down by the Hon'ble Apex Court in ***State of Punjab and Others Vs. Rafiq Masih (White Washer)*** and others reported in (2015) 4 SCC 3334. The Hon'ble Apex Court while summarising the law on recovery of excess payments made to employees held as follows:

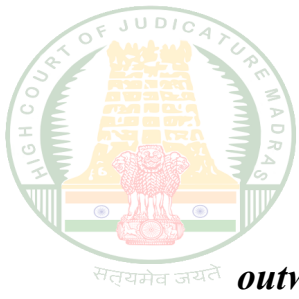
“ (i) Recovery from the employees belonging to Class III to Class IV service (or Group C and Group D service)

(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 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



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outweigh the equitable balance of the employer's right to recover”.

In my view, Clause (iii) of the above judgment is squarely attracted to this case.

Admittedly the petitioner was drawing incentive increment for more than 21 years and therefore as per Clause (iii) of the above Apex Court judgment, the recovery is illegal. Apart from being in violation of Clause (iii) of the aforesaid decision, in my respectful view, the impugned order is inequitable and unduly harsh on the petitioner, who is not responsible for the excess payments made to her over a period of 21 years.

12. In view of the facts and circumstances of the case and the law laid down by this court as well as the Apex Court, I find merit in the writ petition. Hence, the writ petition is allowed and the impugned order dated 02.02.2022, passed by the 2nd respondent is set aside. The respondents are directed to pay the incentive increment to the petitioner for the M.A., degree obtained by her, as expeditiously as possible. No costs. Consequently, the connected miscellaneous petitions are closed.

24.04.2025

dpq

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

1. The Commissioner,
School Education,
DPI Campus,
Chennai 600 006.
2. The District Educational Officer,
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3. The Block Educational Officer
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4. The Headmaster
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N. MALA, J.

dpq

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