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W.P.No.18643 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.06.2025

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.P.No.18643 of 2025
and W.M.P.Nos.20883 and 20884 of 2025

S.Maragathavalli

... Petitioner

Vs.

1.The Director of Elementary Educational
College Education, Chennai - 6.

2.The District Educational Officer,
Salem District, Salem.

3. The Block Educational Officer,
Thondamuthur Panchayat Union
Thondamuthur,
Coimbatore District.

4.The Block Educational Officer
Mechery Panchayat Union
Mechery, Salem District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents in relation to his proceedings issued in Na.Ka.No.2467/A2/2024 dated 27.03.2025 issued by 4th respondent and quash the same and issue a consequential direction to the respondents to



W.P.No.18643 of 2025

continue the incentive increment which has already been granted to the petitioner.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

The instant writ petition has been filed to call for the records of the respondents in relation to his proceedings issued in Na.Ka.No.2467/A2/2024 dated 27.03.2025 issued by 4th respondent and quash the same and issue a consequential direction to the respondents to continue the incentive increment which has already been granted to the petitioner.

2. Learned counsel for the petitioner would submit that the petitioner was appointed on 04.08.2004 as a secondary grade teacher on consolidated pay. Subsequently, she was brought under the regular time scale of pay with effect from 01.06.2006. For her promotional opportunity, she acquired B.A. Degree in Sociology in the year May 2002 and M.A. Degree in the same subject in the year May 2004. She also acquired B.Ed degree as well, in December 2010 through Indira Gandhi Open University. The qualification



W.P.No.18643 of 2025

prescribed for the post of Middle School Headmaster is a Degree and B.Ed.

Therefore, any degree qualification is sufficient for promotion to the post of Middle School Headmaster, in the absence of specification of degree. He further submitted that the petitioner is eligible for incentive increment for obtaining M.A. Sociology. However, without considering the relevant G.O., in its right perspective, the 4th respondent issued a recovery order for the excess pay, paid on account of incentive granted to the petitioner for obtaining M.A. degree with effect from 20.12.2010. It is the submission of the petitioner that no notice was given before ordering recovery and so far, no order passed by the respondent regulating her pay. Hence, prayed to interfere with the impugned order.

3. Per contra, the learned Special Government Pleader would submit that M.A. Sociology is not relevant for Elementary Education. Therefore, the petitioner is not entitled for incentive increment. Hence, justified the impugned recovery order.

4. Heard the learned counsel for both sides and perused the materials available on record.

5. The impugned order has been passed, based upon the audit report issued by the Trichy Regional Audit Department. From the perusal of the



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impugned order, it is made clear that the recovery order has been passed on the sole ground that the increment granted to the petitioner is in contravention to the rules. Though the respondent had made such submission, the very recovery since 2010 would definitely cause harsh repercussion upon the petitioner. In this connection, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others V. Rafiq Masihi (White Washer)*** reported in **2015 4 SCC 334**, for ready reference, this Court deem it appropriate to extract Paragraph No.18, 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 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 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*



WEB COPY



W.P.No.18643 of 2025

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

As per the above precedent, according to the learned counsel for the petitioner, she come under Clause 18(i) and 18(iii) as the recovery is after 5 years. Therefore, this Court finds ample reason to set aside the recovery order dated 27.03.2025 w.e.f 20.12.2010. However, the respondent is competent enough to regulate the pay in accordance with law and rules. Hence, this Court deem it appropriate to set aside the impugned order dated 27.03.2025, by granting liberty to the respondents only to regulate the petitioner's pay in accordance with rule, after giving due notice to the



W.P.No.18643 of 2025

WEB COPY

petitioner and by passing a reasoned order, and that such exercise has to be completed, within a period of six(6) weeks from the date of receipt of a copy of this order.

6. With the above observation, this writ petition is disposed of.
No costs. Consequently connected miscellaneous petitions are closed.

09.06.2025

msv

Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

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W.P.No.18643 of 2025

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msv

W.P.No.18643 of 2025

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