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WP No. 23377 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 29-04-2025**

CORAM

**THE HONOURABLE MS JUSTICE R.N.MANJULA**

**WP No. 23377 of 2019**

**and WMP Nos.23127 & 23132 of 2019**

1. S.Dhandayauthapani  
S/o. M. Balasubramanian Headmaster  
(Rtd) 4-A, Main Road, Street No. 1  
Mallasamuthiram Post Thiruchencode  
Taluk Namakkal District

Petitioner(s)

Vs

1. The Government of Tamil Nadu  
Rep. by Secretary to the Government  
School Education Department Fort St.  
George, Chennai 600 009.

2.The Director of Elementary  
Education  
College Road Chennai 600 006.

3.The District Educational Officer  
Namakal District, Namakkal

4.The Additional Assistant  
Elementary Educational Officer,



Mallasamuthiram Panchayat Union  
Mallasamuthiram Namakkal District.

5. The Block Educational Officer - I  
Mallasamuthiram Panchayat Union  
Mallasamuthiram Namakkal District.

6. The Branch Officer  
O/o. The Accountant General (A and E)  
Teynampet, Chennai 600 018

7. The District Treasury Officer  
Namakkal District, Namakkal

8. The Sub Treasury Officer  
Thiruchencode Namakkal District.

Respondent(s)

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the 4th Respondent issued in Na.Ka.No. 305 / A1 / 2017 dated 09.01.2018 and Respondent No. 5 in Na.Ka.No. 305 / A1 / 2017 dated 27.09.2018 and in Na.Ka.No. 918 / A1 / 2018 dated 21.12.2019 and in Na.Ka.No. 918 / A1 / 2018 dated 21.02.2019 and 6th Respondent in No. P17 / 3 / 1172 / 100 / ADJK / 548 dated 28.01.2019 respectively and quash the same and consequentially issue a direction to the Respondents to restore the incentive increment granted to the petitioner originally for M.A. Degree obtained under the Open University System and B.Ed. with effect from 15.12.2000 and to fix the pay of Petitioner in the



post of Primary School Headmaster at Rs. 16600-39100 ADD 5400 GP in selection grade primary school headmaster and continue the same in the promotional post of B.Ed. Middle School Headmaster by way of pay protection and thereafter fix the petitioners last pay drawn and then fix the pension of Petitioner and consequently to grant arrears of pay and pension.

For Petitioner : Mr.Saseetharan. R

For Respondent(s): M/s.P.Rajarajeswari  
Government Advocate  
for R1 to R5, R7 & R8  
Mrs.J.Sree Vidhya  
Standing Counsel for R6

### **ORDER**

The writ petition has been filed to quash the impugned order passed by the respondents and consequently issue a direction to the Respondents to restore the incentive increment granted to the petitioner with effect from 15.12.2000 and to fix the pay of Petitioner in the post of Primary School Headmaster at Rs. 16600-39100 ADD 5400 GP in selection grade primary school headmaster and continue the same in the promotional post of B.Ed. Middle School Headmaster by way of pay protection and thereafter fix the petitioners last pay drawn and then fix the pension of Petitioner and consequently to grant arrears of pay and pension.



2. The petitioner is a retired Headmaster. The petitioner has been served with an order of recovery after having his pay refixed on the ground that his pay has been fixed erroneously. In the impugned order it is stated that the petitioner is not entitled to get the incentive increment for his M.A. degree obtained through Open University. Hence the incentive order so far drawn by the petitioner should be refunded.

3. Mr.R.Saseetharan, the learned counsel for the petitioner, submitted that at the time when the petitioner had completed M.A. degree through Open University, the Government Order in G.O.Ms.No.307 School Education Department dated 15.12.2000 was in force. The petitioner had acquired the qualification in the year 1994 and subsequently the above Government Order has been issued to entitle him to get the incentive increment. The subsequent Government Order issued in G.O.Ms.No.118 School Education Department dated 10.07.2013 will not be held against the petitioner in view of its prospective implementation. On 17.02.2006 an another Government Order in G.O.Ms.No.29 dated 17.02.2006 has been issued which would amend G.O.Ms.No.307 School Education Department dated 15.12.2000, to the effect that the decree obtained through Open University should be from the Universities approved by UGC. The petitioner claims that his entitlement is governed only in accordance with G.O.Ms.No.307 School Education Department dated 15.12.2000 and G.O.Ms.No.29 dated 17.02.2006 and not in accordance with G.O.Ms.No.118 School Education Department dated



10.07.2013. It is further submitted that the petitioner has been allowed with the incentive not by way of suppressing any material facts and whatever was allowed to him was only in accordance with law and hence the recovery and refixation is illegal.

4. The impugned orders have been issued after several years and after sanctioning incentive to the petitioner. The petitioner has been sanctioned with incentive in the year 2001 and the impugned order has been issued after several years by not making any reference to G.O.Ms.No.307 School Education Department dated 15.12.2000. Even the refixation has been done without giving any opportunity to the petitioner to make his submission.

5. So far as recovery is concerned, the position of law is settled by the Hon'ble Supreme Court in ***State of Punjab and others etc. ... Appellants versus Rafiq Masih (White Washer) etc.*** reported in ***2015 4 SCC 334*** in which it is held as under:

*“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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*





impugned order so far it relates to the recovery alone is quashed and the orders as to the refixation is construed as notice given to the petitioner and for which the petitioner is at liberty to make his submission, within a period of four weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents shall pass orders afresh on merits and in accordance with law, within a period of four weeks thereafter. No costs. Connected miscellaneous petitions are closed.

**29-04-2025**

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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**R.N.MANJULA J.**

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