



W.A(MD) No.1556 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 27.06.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

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and

C.M.P.(MD)No.8859 of 2025

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

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

4.The Headmaster,
Government Higher Secondary School,
N.Subbaihapuram,
Virudhunagar District.

... Appellants / Respondents

Vs.



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R.Bhaskar

... 1st Respondent /
Writ Petitioner

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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 23.08.2024 made in W.P.(MD)No.9717 of 2017 and allow this writ appeal.

For Appellants : Mr.C.Venkatesh Kumar
Additional Government Pleader

For Respondent : Mr.R.Saseetharan

JUDGMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

The respondent herein was appointed as Physical Education Teacher on 20.11.1996 in the Government High School, Virudhunagar. Even at the time of appointment, he was possessing B.Sc. degree in Botany and M.P.Ed degree. His services were regularised on 26.02.1997. His probation was declared on 25.02.1999. He was granted selection grade on 26.02.2007. The respondent herein passed M.Phil degree in Physical Education and Sports Science in the year 2008. The last M.Phil exam was written by



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him on 29.06.2008. For this, the writ petitioner was given incentive increment with effect from 30.06.2008 vide proceedings dated 05.07.2013 issued by the Headmaster, Government Higher Secondary School, N.Subbiapuram, Virudhunagar. The respondent also obtained B.Ed degree and the date of last examination of B.Ed degree was on 28.12.2011. For this, the writ petitioner was given another incentive increment vide proceedings issued by the Headmaster on 18.02.2015 from 29.12.2011 by referring to G.O.Ms.No.42 dated 10.01.1969. Following audit objection, the Chief Educational Officer, Virudhunagar vide proceedings dated 08.05.2017 cancelled the incentive increments granted for acquiring these qualifications (M.Phil and B.Ed). Recovery was also ordered. Challenging the same, the respondent herein filed W.P.(MD)No.9717 of 2017 and the same was allowed by the learned single Judge on 23.08.2024 by applying the **White Washer case**. Challenging the same, the State has filed this appeal.



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2. Two issues arise for consideration:-

a) Whether the writ petitioner was entitled to both the incentive increments?

b) Whether the learned single Judge was justified in applying the **White Washer** principle to forbid the recovery?

3. The writ petitioner claimed incentive increment for having acquired B.Ed. degree qualification on the strength of G.O.Ms.No.42 Educational Department dated 10.01.1969 and G.O.Ms.No.624, Education Department dated 13.07.1992. G.O.Ms.No.42 dated 10.01.1969 states that the teachers belonging to Physical Training Grade-I would be entitled to incentive increment if they are acquiring B.T. or B.Ed., or Diplomas in Physical Education. In other words, the qualification obtained by them must be in the subject of Physical Education. Likewise G.O.Ms.No.624 Education Department dated 13.07.1992 also provides for incentive increment in respect of Physical Education teachers only if the higher qualification is in the area of Physical Education. It is not the case of the writ petitioner



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that he acquired B.Ed. Degree in Physical Education. Therefore, grant of incentive increment for having acquired B.Ed. degree was incorrect.

4. As regards conferment of incentive increment for having acquired M.Phil. Degree, it can be justified with reference to G.O.Ms.No.177 School Education Department dated 13.10.2016. The said G.O. states that those Physical Education teachers who already possessed M.PEd., will be entitled to incentive increment if they acquire M.Phil in Physical Education. The writ petitioner fulfils the said requirement.

5. It is true that conferment of incentive increment for acquiring M.Phil in Physical Education was recognized for the first time vide G.O.Ms.No.177 School Education Department dated 13.10.2016. The view taken by one of us in **W.P.(MD)No.4973 of 2019 vide order dated 16.11.2022** that the entitlement for acquiring the necessary qualification would commence only after



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issuance of G.O.Ms.No.177 dated 13.10.2016 was held to be incorrect

by the Hon'ble Division Bench vide order dated **22.10.2024 made in**

W.A.(MD) No.2084 of 2024 (State of Tamil Nadu rep. by its

Secretary Vs. P.Muneeswari)). FR.26 provides that the right

conferred by passing the examination is the right to draw an

increment from the day following the last day of the examination

provided that the person concerned is otherwise eligible for

increment. Therefore, the authority was justified in granting

incentive increment to the writ petitioner for acquiring M.Phil.,

degree with effect from 29.06.2008 when the last examination in

M.Phil., was written. The authority was justified only to the extent of

holding that conferment of incentive increment for acquiring B.Ed.,

degree was incorrect.

6. The next question that calls for consideration is whether the recovery could have been ordered.



7. The Hon'ble Supreme Court in the decision reported in *AIR*

2015 SUPREME COURT 696 (State Of Punjab & Ors. Vs. Rafiq

Masih (White Washer)) case held as follows:-

“12. 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).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



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(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.”

8. The writ petitioner belongs to 'A' category and not to 'C' and 'D' category. Hence, he cannot invoke the benefit conferred in Clause (i) referred above. Secondly, the sanction of incentive increment was ordered only vide proceedings dated 18.02.2015. The grant of incentive increment was of course with effect from 29.12.2011. But that would not be the material date for reckoning the five years period. Only if the incentive increment had been paid for a period of five years and subsequently recovery is ordered, it would be hit by



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Clause (iii) of the directions in **White Washer** case. Since the proceedings for sanctioning the payment was made only in the year 2015 and recovery was ordered in the year 2017 itself, it would not attract the bar laid down in **White Washer** case.

9. Therefore, the order of the learned single Judge is interfered with to the aforesaid extent.

10. The excess payment granted to the writ petitioner in respect of B.Ed., degree can be adjusted from the writ petitioner's future salaries in installments. The authority is directed to refix the writ petitioner's correct pay in accordance with what has been laid down above. The order passed by the learned single Judge is modified. This writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.)

(K.R.S., J.)

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Index : Yes / No

Internet : Yes / No

NCC : Yes / No

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