

W.P.(MD) No. 24803 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 11.07.2025

Pronounced On : 18.07.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. (MD) No. 24803 of 2016

and

W.M.P.(MD)Nos.17946 & 17947 of 2016

G.Selvam,
Physical Education Teacher,
Municipal Jeyaprakash Middle School,
Karur Town, Karur District.

...Petitioner

Vs.

1.The Government of Tamilnadu,
Rep by its Secretary to Government,
School Education Department,
Fort St. George, Chennai.

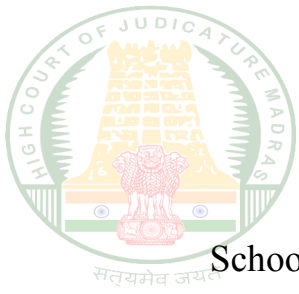
2.The Director of Elementary Education,
College Road, DPI Campus,
Chennai-6.

3.The Assistant Elementary Educational Officer,
Karur Union, Karur District.

...Respondents

PRAYER IN W.P.:

To issue a Writ of Certiorarified or any other Writ or Order or Direction in the nature of Writ of Certiorarified Mandamus, calling for the records relating to para 7 (iii) of impugned G.O.(Ms.) No. 177,



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School Education 5(2) Department dated 13.10.2016 of the 1st respondent and the consequential impugned proceedings in Na.Ka.No 208 /A1 /2016 dated 07.11.2016 of the 3rd respondent herein and quash the same and consequently direct the respondents herein to award incentive increment for petitioner's M.Phil degree with effect from the date of appointment namely 10.01.2011 with all other attended benefits including arrears and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thus render justice.

PRAYER IN W.M.P.(MD) No.17946 of 2016:

To dispense with the production of impugned G.O.(Ms.)No.177 School Education 5(2) department dated 13.10.2016 of the 1st respondent for the present and thus render Justice.

PRAYER IN W.M.P.(MD) No.17947 of 2016:

To grant an interim stay of all further proceedings pursuant to the impugned proceedings in Na.Ka.No 208/A1/2016 dated 07.11.2016 of the 3rd respondent herein and thus render Justice.

APPEARANCE OF PARTIES:

For Petitioner : Mr. T. Pon Ramkumar

For Respondents : Mr.J.Ashok
Additional Government Pleader



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JUDGMENT

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2. The petitioner, G. Selvam, working as a Physical Education Teacher (P.E.T) at the Municipal Jeyaprakash Middle School, Karur, challenges the recovery order dated 07.11.2016 passed by the third respondent, by which an incentive increment granted for his M.Phil qualification was sought to be withdrawn based on para 7(iii) of G.O. (Ms.) No. 177, School Education 5(2) Department, dated 13.10.2016. The petitioner seeks quashing of the said order and a direction to award the incentive increment with effect from the date of his initial appointment, i.e., 10.01.2011.

3. The petitioner was appointed on 10.01.2011, already holding an M.P.Ed degree in Physical Education and M.Phil degree acquired in 2007. Relying on G.O. (Ms.) No. 18 dated 18.01.2013, which extended the benefit of incentive increment to B.T. Assistants possessing M.Phil, the third respondent granted a similar benefit to the petitioner by proceedings dated 25.09.2013. This was based on a departmental clarification which was understood to apply to P.E.Ts as well.



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4. However, by G.O.(Ms.) No. 177 dated 13.10.2016, the Government expressly clarified that the incentive increment for M.Phil qualification in the case of Physical Education Teachers would be applicable only from the date of issuance of that G.O. Citing this clarification and an audit objection, the third respondent issued the impugned recovery order without issuing any prior notice to the petitioner.

5. Learned counsel for the petitioner submitted that the petitioner was fully qualified at the time of appointment, and the increment was granted based on the prevailing administrative interpretation. The subsequent clarification cannot retrospectively unsettle the benefit already extended. He further submitted that the recovery was effected without notice and in breach of natural justice. He placed reliance on the judgment of the Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih*, reported in *(2015) 4 SCC 334*.

6. In response, the learned Additional Government Pleader argued that G.O. (Ms.) No. 18 dated 18.01.2013 applied only to B.T. Assistants and not to P.E.Ts. The benefit was erroneously extended, and the recovery



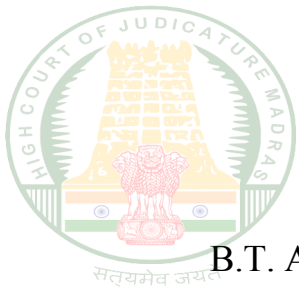
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was necessitated once the position was clarified in G.O. (Ms.) No. 177 dated 13.10.2016.

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7. Upon careful consideration of the submissions and records, this Court finds that the incentive increment was granted in 2013 on the Department's own understanding of G.O. (Ms.) No. 18 dated 18.01.2013, supported by internal clarifications. The petitioner neither misrepresented any facts nor played any role in the decision. The benefit stood for over three years before being unilaterally withdrawn. No notice or opportunity of hearing preceded the impugned recovery, which renders it procedurally infirm.

8. The petitioner relies on G.O. (Ms.) No. 324, Education Department, dated 25.04.1995, to contend that he was entitled to incentive increment from the date of his appointment on 10.01.2011, having already acquired the M.Phil. qualification. While G.O.(Ms.) No. 324 laid down a general policy granting incentive increments for higher educational qualifications such as M.Phil. and Ph.D., its applicability to specific cadres was subsequently refined through department-specific orders. G.O.(Ms.) No.18 dated 18.01.2013 extended such benefits explicitly to



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B.T. Assistants, and it was only with G.O. (Ms.) No. 177 dated 13.10.2016 that the entitlement was formally clarified for Physical Education Teachers, with effect only from that date. Accordingly, the petitioner's claim for incentive increment from 10.01.2011 cannot be sustained solely on the basis of G.O.No. 324. Nonetheless, the recovery of sums already paid based on departmental interpretation prior to G.O.No. 177 remains impermissible under the **Rafiq Masih** doctrine.

9. As held by the Hon'ble Supreme Court in **Rafiq Masih** (supra), recoveries from Class III employees for excess payments made by employer error particularly in the absence of fraud, misrepresentation, or deceit are impermissible where they result in hardship or inequity. The petitioner, being a Class III employee, is squarely covered by the protective umbrella of that ruling.

10. However, this Court is not inclined to grant retrospective monetary relief from the date of appointment. G.O. (Ms.) No. 18 dated 18.01.2023 did not extend to P.E.Ts, and G.O. (Ms.) No. 177 makes the entitlement prospective. The petitioner's entitlement must therefore be tested under the policy as clarified and the citation in the case of



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R.Premakumari v. State of Tamilnadu reported in ***CDJ 2008 MHC 3188***

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submitted by the petitioner does not help his case.

11. In view of the above, the Writ Petition is partly allowed. The impugned proceedings in Na.Ka.No 208/A1/2016 dated 07.11.2016 passed by the third respondent is quashed. However, the petitioner shall not be entitled to retrospective fixation of incentive increment with effect from 10.01.2011. His entitlement, if any, shall abide by the policy laid down in G.O. (Ms.) No. 177 dated 13.10.2016. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

18.07.2025

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No
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DR. A.D. MARIA CLETE, J.

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To

1.The Secretary to Government,
Government of Tamilnadu,
School Education Department,
Fort St. George, Chennai.

2.The Director of Elementary Education,
College Road, DPI Campus, Chennai-6.

3.The Assistant Elementary Educational officer
Karur Union, Karur District.

4.The Additional Assistant Elementary
Educational Officer
Karur Union, Karur District.

Pre-delivery Judgment made in

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and

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