
(2015) 03 MAD CK 0520
In the Madras High Court
Case No : Writ Petition No. 33170 of 2007

M. Joseph Charles

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) WritLR 554

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S.M. Edward Stanley, for the Appellant; K.V. Dhanapalan, Additional Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—This writ petition has been filed by Mr. M. Joseph Charles challenging the impugned order of recovery dated 6.6.2006 issued by the District Elementary Educational Officer, Erode, the third respondent herein and the consequential proceedings in Na.Ka. No. 1303/06/A1 issued by the Additional Elementary Educational Officer, the fourth respondent herein dated 17.11.06, to quash the same so far as the petitioner is concerned with a consequential direction to the respondents to continue to pay the last drawn salary with incentive increments for higher educational qualification acquired by him with all other attendant and monetary benefits.

2. Learned counsel for the petitioner submitted that the petitioner, having passed the Diploma in Teacher Education in the year 1992, registered his name in the employment exchange for getting appointed as Secondary Grade Teacher. Thereafter, he appeared in the competitive examination and got selected for appointment as Secondary Grade Teacher on 27.7.95 in the Panchayat Union Elementary School, Mettuvalu, Kunnathur, Uthukuli Union in Erode District. Even prior to that, he had passed B.Com. degree in the year 1986. However, after joining the post of Secondary Grade Teacher on 31.7.95, he has again joined the B.Ed. Degree course conducted by Annamalai University through correspondence

course during 1995-96 with the permission granted by the Assistant Educational Officer, Uthukuli on 25.9.95. Subsequently, the District Elementary Educational Officer, Erode also permitted him to take teaching practice in his proceedings dated 29.7.97 in O.Mu. No. 11254/97/B3. That apart, when the petitioner also passed B.Ed. Degree course in the year 1998, the same was also approved by the third respondent, who ratified the higher educational qualification in his proceedings dated 13.2.2001 bearing O.Mu. No. 61/A3/2001. The further case of the petitioner is that after passing the B.Ed., course, he became a B.Com., B.Ed., Secondary Grade Teacher. Thereafter, he has also studied M.Ed., degree course with the permission granted by the third respondent and he also passed the M.Ed., degree course in May, 2000. Therefore, the petitioner, having become a qualified Secondary Grade Teacher with higher educational qualification of B.Com., M.Ed., is eligible to get the incentive increments for acquiring such higher educational qualification as per the rules and regulations of the Government. In view of that, he made a representation to the fourth respondent to sanction the incentive increments for acquiring the higher educational qualification on 2.1.2002. The Additional Elementary Educational Officer, Uthukuli, accepting his request, had sanctioned the two incentive increments, namely, four increments to him. Explaining further, the learned counsel submitted that as per G.O. Ms. No. 42, Education Department dated 10.1.69, he was sanctioned with the incentive increments for acquiring higher educational qualification in Na.Ka. No. 22/02/A1 dated 19.7.2002. Again for having acquired M.Ed., degree, the fourth respondent again sanctioned two more incentive increments, namely, four increments from the next day of the last examination of M.Ed. Degree. The first incentive increment was sanctioned with effect from 30.1.98 for B.Com./B.Ed., with an increase of Rs. 250/- with basic pay. Again the second incentive increment was also sanctioned with effect from 22.5.2000 for M.Ed., qualification with an increase of Rs. 250/- with basic pay and he was also disbursed with all pending arrears and his salary was also refixed from 30.1.98 and once again his salary was refixed from 22.5.2000.

3. Under this background, the grievance of the petitioner is that the third respondent raised an objection through the annual inspection for the year 2005-06. In paragraph-7 of the inspection report dated 6.6.2006, it has been stated that the incentive increment granted from 30.1.98 to the petitioner for having acquired the higher educational qualification of B.Com., B.Ed., should be recovered. Pursuant to the said inspection report of the third respondent, the fourth respondent also had passed the impugned order of recovery of the incentive increments already given to him from 30.1.98 in the proceedings dated 17.11.2006, citing the reason that the higher educational qualification acquired by the petitioner is not coming under the elementary educational curriculum. As the incentive increments given to the petitioner had been cancelled and thereupon his salary has also been refixed with effect from 30.1.98, a direction was given to refund a sum of Rs. 74,217/- already given to him for the period from 30.1.98 to 30.11.2006, as a result, the petitioner is losing Rs. 738/- per

month in his salary.

4. Assailing the approach adopted by the fourth respondent in the impugned order, the learned counsel for the petitioner, taking support from G.O.Ms. No. 42, Education Department dated 10.1.69, submitted that when the annexure appended to the said Government Order is clear that the Secondary or Senior Basic Grade Teacher on acquiring higher qualification, namely, B.T., or B.Ed., degree of a University in the State or the degrees of other Universities recognised as equivalent to the degree B.T., or B.Ed., degree of Universities of the State, two advance increments are admissible, the petitioner from the date of acquiring B.Ed., till now is entitled to get two advance increments as ordered in G.O.Ms. No. 42, since, till date, no modification or cancellation has been made in this regard. Again relying upon paragraph-2 of the annexure to the said G.O.Ms. No. 42 dated 10.1.69, he further submitted that he is entitled for two more advance increments since he had also acquired M.Ed., degree. According to him, a reading of the said paragraph clearly shows that a secondary grade teacher who after passing B.T., or B.Ed., degree examination qualifies for M.A., or M.Sc., or M.Ed., degree but working in Secondary Grade Post may be given advance increments for second time also, namely, two advance increments after passing B.T., or B.Ed., degree and another two after passing M.A., or M.Ed., degree, when the case of the petitioner for having acquired B.Ed., and also M.Ed., is wholly covered, the impugned order passed by the fourth respondent on the basis of paragraph-7 of the annual inspection report dated 6.6.2006 that the incentive increments granted from 30.1.98 to the petitioner for acquiring higher educational qualification of B.Com., B.Ed., should be recovered is liable to be set aside.

5. Adding further, the learned counsel submitted that the entire reasoning given by the fourth respondent would go to show that the petitioner had acquired B.Com., degree and since the B.Com., degree has not been mentioned anywhere in G.O.Ms. No. 42 dated 10.1.69 or the subsequent G.O.Ms. No. 1023, Education, Science and Technology Department dated 9.12.93, he is not entitled for the incentive increments, also cannot be sustained, inasmuch as nowhere in the G.O.Ms. No. 42 dated 10.1.69 or in G.O.Ms. No. 1023 dated 9.12.93, the Government have ever indicated that acquiring B.Com./M.Com., would be a disqualification. On the other hand, when both the Government Orders specifically mention that acquiring B.T., or B.Ed., degree by a Secondary Grade Teacher would enure him the benefit of two advance increments and two more advance increments for acquiring M.Ed., degree, the fourth respondent ought not to have accepted the inspection report dated 6.6.2006. Again taking support from the judgment of the Apex Court in the case of *Sahib Ram Vs. State of Haryana and Others*, (1995) 1 JT 24 : (1995) 1 SCC 18 Supp : (1994) 3 SCR 674 Supp : (1995) 1 SLJ 151, the learned counsel submitted that when the petitioner has not at any point of time misrepresented for acquiring the aforementioned four increments, the observations of the Apex Court in *Sahib Ram*'s case shall be squarely applicable to his case as well. Further, for the same

proposition, he has also relied upon one another judgment of the Apex Court in the case of Babulal Jain Vs. State of M.P. and Others, (2007) 6 JT 59 : (2007) 6 SCALE 70 : (2007) 6 SCC 180 : (2007) 2 SCC(L&S) 422 : (2007) 5 SCR 514 , wherein the Apex Court has held that the excess payment having been made by allowing higher pay to a person on misconception of law and not due to any mistake, misrepresentation or fraud, recovery of such excess payment cannot be made if there is no prior notice whatsoever.

6. A detailed counter affidavit has been filed by the respondents. Mr. K.V. Dhanapalan, learned Additional Government Pleader appearing for the respondents, while supporting the impugned order, contended that the incentive increments prescribed by the Government in G.O.Ms. No. 42 dated 10.1.69 and in another G.O.Ms. No. 1032, Education Department dated 22.6.71 for acquiring higher qualification based on the syllabus of primary schools have been properly applied in the case of the petitioner, who holds B.Com., degree, which is not recognised in the syllabus of the primary schools. Subsequently, in the annual report of the District Elementary Educational Officer for Primary Schools, it has been observed that these incentives granted to the petitioner were not correct. On this basis, they have cancelled the proceedings of the Additional Assistant Educational Officer of Primary Schools and ordered for recovery of the pay and allowances of Rs. 74,217/- drawn by the petitioner. Therefore, the petitioner cannot have any grievance. Adding further, he submitted that the petitioner was appointed as Secondary Grade Teacher in the elementary school based on the Diploma in Teacher Education certificate and the selection in the competitive examination conducted by the Teachers Recruitment Board. Since he has passed B.Com., degree in 1966, that was not considered for the selection. However, he has acquired B.Ed., and also M.Ed. Keeping in mind the B.Ed., degree and also the M.Ed., degree obtained by the petitioner, the fourth respondent wrongly sanctioned the two incentive increments, each for B.Com., B.Ed., and M.Ed. But for the sole reason that the B.Com., B.Ed., were not recognised in the syllabus of the primary schools, therefore, the sanction of the incentive increments being irregular and the pay fixed and the arrears claimed were directed to be recovered, since they are in excess of lawful entitlements of the petitioner. When the aforementioned G.O.Ms. No. 42 dated 10.1.69 and G.O.Ms. No. 1032 dated 22.6.71 have ordered for sanction of two incentive increments for Secondary or Senior Basic Grade teachers if they possess or acquire higher qualification of B.T., or B.Ed., degree and M.Ed., degree, the Government in the aforementioned Government Orders have clearly indicted that the incentive increments would be for those who possess B.A., or B.Sc., on acquiring B.T., B.Ed. Further the two additional increments admissible to teachers with M.Ed., who possess B.A., or B.Sc., or M.A., or M.Sc. But nowhere in the Government Order, B.Com., degree has been mentioned. Further, it has been specifically directed in the said Government Order that sanction of incentive increments to teachers for acquiring higher educational qualification in a particular subject on condition that the teacher will also be required to teach that subject in addition to the concerned

subject. Based on this reasoning, the Government have prescribed that the teachers who possess B.A., or B.Sc., degree on acquiring B.Ed., degree will be paid incentive increments. Again B.Com., degree having not been prescribed for elementary school syllabus, the impugned order has been rightly passed. Admittedly, the petitioner was appointed as Secondary Grade Teacher only in the elementary school. As the B.Com., degree secured by the petitioner is not useful to the students studying in the elementary school level, the fourth respondent, accepting the inspection report dated 6.6.2006, passed the impugned order, consequently indicating the refixation of the salary of the petitioner. Although the Government have permitted in the past cases, namely, to those who have already obtained B.T., or B.Ed., M.A., or M.Sc., and M.Ed., qualification prior to the date of issue of the aforesaid orders, the petitioner has misrepresented to this Court and obtained the stay order by giving a false statement that the G.O.Ms. No. 1023, Education dated 9.12.93 does not discriminate B.Sc., B.Ed., and B.Com., B.Ed., qualification and in view of that, accepting the clarification made in the counter affidavit, he prayed for dismissal of the writ petition.

7. Heard the learned counsel for the parties.

8. The petitioner has possessed B.Com., B.Ed., and M.Ed., degrees, therefore, on the basis of the aforementioned qualifications possessed by the petitioner, the question that needs an answer in the present case is whether he is eligible to get the two incentive increments for B.Ed., qualification and also two more incentive increments for M.Ed., qualification. In this context, it is necessary to extract the relevant portion of the G.O.Ms. No. 42 dated 10.1.69 issued by the Government of Tamil Nadu Education Department and the relevant annexure providing for incentive increments for the eligible teachers, as follows:-

"G.O.Ms. No. 42, 10th January, 1969

The Government have already accepted in principle that incentive payments and awards should be given to the teachers in schools who acquire higher educational qualifications. The Director of School Education has accordingly submitted proposals, as indicated, in Annexure to this order.

ANNEXURE

A teacher belonging to the category mentioned in column (1) of the table below shall be eligible for the two advance increments in the scale of pay admissible for this category if he/she possesses or acquires higher qualification specified in column 3 provided the maximum in the scale of pay is not reached.

2. A secondary grade teacher who after passing B.T., or B.Ed., degree examination qualifies for M.A., or M.Sc., or M.Ed., degree but working in Secondary Grade Post may be given advance increments for second time also i.e., two advance increments after passing B.T., or B.Ed., degree and another two after passing M.A., or M.Ed., degree. B.T. Teacher who after passing M.A., or M.Sc., qualifies for M.Ed., degree examination but working in B.T., or

Headmaster's post may be given advance increments for a second time also, i.e., two advance increments after passing M.Ed., degree."

9. A close reading of the annexure to the aforementioned Government Order shows that a teacher belonging to the category mentioned in column (1) of the table viz., Secondary or Senior Basic Grade is eligible for the two incentive increments in the scale of pay admissible for that category on acquiring B.T., or B.Ed., degree of a University in the State or the degrees of other Universities recognised as equivalent to the degree B.T., or B.Ed., degree of Universities of the State. Similarly, the second column also deals with the grant of incentive increments for all those teachers viz., B.T., or B.Ed., Assistant for further acquiring M.A./M.Sc., M.Ed., degree of a University in the State or the degree of other Universities recognised as equivalent to M.A./M.Sc., or M.Ed., Universities of the State.

10. But a mere reading of paragraph-2 of the annexure to the above Government Order unambiguously answers the query raised by the parties that a secondary grade teacher who after passing B.T., or B.Ed., degree examination qualifies for M.A., or M.Sc., or M.Ed., degree but working in Secondary Grade Post may be given advance increments for second time also, namely, two advance increments after passing B.T., or B.Ed., degree and another two after passing M.A., or M.Ed., degree. Therefore, when the G.O.Ms. No. 42 is simple and clear that a secondary grade teacher or senior basic grade teacher while obtaining B.T., or B.Ed., degree is entitled to get two advance increments in the scale of pay admissible to that category, if he/she possesses or acquires higher qualification specified in column (3) and further makes it clear that after passing B.T., or B.Ed., degree examination qualifies for M.A., or M.Sc., or M.Ed., degree but working in Secondary Grade Post may be given advance increments for the second time also, the impugned order issued by the fourth respondent warrants interference. For better clarity, if paragraph-3(1)(ii) of the G.O.Ms. No. 1023, Education, Science and Technology Department dated 9.12.93, which is extracted below,

"3. Government now issues the following amendments to the G.O. first and third above.

(1) In the Annexure to G.O.Ms. No. 42, Education dt. 10.1.69

(ii) A Secondary Grade Teacher who has passed B.T., or B.Ed., degree examination and obtained two advance increments shall be eligible for another two advance increments for passing M.A., M. Sc., or M.Ed., degree while working either in the Secondary Grade Post or in B.T./B.Ed., Assistant post. A B.T. Teacher who after passed M.A., or M.Sc., and obtained two advance increments shall be eligible for another two advance increments if qualified M.Ed., degree while working in B.T. Assistant post or Headmaster post.

(ii)(a). The maximum number of advance increments which a teacher can get under the scheme of incentive increments under this Government Order shall be four in his entire service."

is also perused, it makes the issue further clear that a Secondary Grade Teacher who has passed B.T., or B.Ed., degree examination and obtained two advance increments shall be eligible for another two advance increments for passing M.A., M.Sc., or M.Ed., degree while working either in the Secondary Grade Post or in B.T./B.Ed., Assistant post. Similarly, paragraph 3(1)(ii)(a) also makes one another issue clear that the maximum number of advance increments which a teacher can get under the scheme of incentive increments shall be four in his entire service. Therefore, when the petitioner has been given two incentive increments for having acquired B.Ed., qualification in the year 1998 and two more incentive increments for having acquired M.Ed., qualification in the year 2000, which are well within the statutory limit, namely, four advance increments as per G.O.Ms. No. 1023 dated 9.12.93, in my considered view, the fourth respondent ought not to have misplaced the meaning of the aforementioned Government Order, on the premise that the petitioner stands disqualified, since he has acquired B.Com., degree. Therefore, the impugned order to recover the amount already paid to the petitioner for the period commencing from 30.1.98 to 30.11.2006 amounting to Rs. 74,217/- is definitely liable to go, in the light of the observation of the Apex Court in the case of Sahib Ram Vs. State of Haryana and Others, (1995) 1 JT 24 : (1995) 1 SCC 18 Supp : (1994) 3 SCR 674 Supp : (1995) 1 SLJ 151 , wherein it is held that if any benefit of higher pay scale is given not on account of any misrepresentation but by wrong construction made by the department for which the petitioner cannot be held to be at fault. The above view has also been reiterated in the case of Babulal Jain Vs. State of M.P. and Others, (2007) 6 JT 59 : (2007) 6 SCALE 70 : (2007) 6 SCC 180 : (2007) 2 SCC(L&S) 422 : (2007) 5 SCR 514 , wherein it is clearly held that the excess payment having been made by allowing higher pay to any person on misconception of law and not due to any mistake, misrepresentation or fraud on the part of such person, recovery of the excess payment without issuing any show cause notice to the person concerned is not justified.

11. For all the aforementioned reasons, the impugned orders are set aside and the writ petition stands allowed. Needless to mention that the petitioner is entitled to get the two advance increments for each of the B.Ed., and M.Ed., degrees. Consequently, M.P. Nos. 2 and 3 of 2007 and 1 of 2014 are closed. However, there shall be no order as to costs.