

(2010) 01 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 8664 of 2003 and W.M.P. No. 11106 of 2003

T. Rajendran and S. Perumal

APPELLANT

Vs

The Director of Elementary Education, The Additional
Assistant Elementary Education Officer and The Manager, A.
Thangavel Udayar Aided Middle School

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Citation : (2010) 01 MAD CK 0029

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : K. Thennan, for the Appellant; A. Suresh, Additional Government
Pleader for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The petitioners have been appointed as Secondary Grade Assistant Teachers in the third respondent school on

09.07.1977 and 30.08.1973 respectively and they continued in the same post without any promotion. They have acquired the further qualification

of M.A. Degree (History) through Open University system from Annamalai University in May 1993 and they have also passed B.Ed. Degree

through correspondence course in May 1995. The petitioners are entitled to receive two incentive increments for the additional qualification of

M.A. and B.Ed. Degrees as per G.O.Ms. No. 1023 Education, Science and Technology Department dated 09.12.1993.

2. As per the tenure of G.O.Ms. No. 1023 Education, Science and Technology Department dated 09.12.1993, A Secondary Grade Teacher is

eligible for 2 advance increments when he acquires B.T. Or B.Ed. qualification

and that he is again eligible for 2 advance increments when he acquires M.A. or M.Sc., or M.Ed. qualification"" and accordingly the petitioners have been awarded with 2 incentive increments. One for M.A.

Degree and another for their B.Ed. Degree from 01.07.1994 onwards.

3. The Government of Tamil Nadu has issued G.O.Ms.No.307 School Education Department dated 15.12.2000, directing the concerned

Authorities to award incentive increment from the date of issuance of the said G.O.

4. The Core contention of the learned Counsel for the petitioners is that G.O.Ms. No. 307, School Education Department dated 15.12.2000 does

not anywhere either expressly or impliedly direct the concerned Authorities to effect a recovery of the incentive increments already awarded to the

petitioners/Teachers for the period prior to the date of issuance of G.O.Ms. No. 307 School Education Department dated 15.12.2000 and

therefore the impugned proceedings Na.Ka. No. 437530/EH3/2000 dated 19.12.2000 issued by the first respondent/the Director of Elementary

Education, Chennai in ordering the recovery of incentive increments already awarded to the Post Graduate Degree holders through Open

University system is per se, not valid in law and the same is illegal.

5. Based on the G.O.Ms. No. 307 School Education Department dated 15.12.2000 and the other letters, the second respondent/the Additional

Assistant Elementary Education Officer, Kalasapakkam, Tiruvannamalai District in his proceedings has ordered recovery of the incentive

increments already awarded to the petitioners herein. The third respondent/School, in its proceedings Lr.No.5/2003 dated 13.02.2003 has

ordered recovery of a sum of Rs. 48,742/- in respect of the first petitioner. However, the learned Counsel for the petitioner brings it to the notice

of this Court that in respect of the second petitioner also, the same sum of Rs. 48,742/- has been ordered to be recovered by the third respondent

in its proceedings dated 13.02.2003.

6. Expatiating his submissions, the learned Counsel for the petitioner submits that the first respondent, the Director of Elementary Education,

Chennai in the impugned order dated 19.12.2000 has ordered for effecting the recovery of the incentive increments already given to the concerned

without issuance of proper notice to the parties and therefore the same is not

correct in the eye of law and to lend support his contention, he relies on the decision of this Court D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, , wherein it is held as follows:

The course and method adopted by the Tribunal cannot be appreciated in the case of the petitioner. Even if it is accepted for argument sake that

salary of the petitioner is fixed in a wrong scale of pay, it is fault committed by the department and the officers, for which the petitioner should not

be penalized after lapse of number of years that too after retirement of the petitioner.

Also, the learned Counsel for the petitioner in the aforesaid decision at page No. 146 relies on the observation which is extracted as under:

In support of the said argument, he relied on the judgment of the Supreme Court in the case of Divisional Superintendent, Eastern Railway,

Dinapur and Others Vs. Shri L.N. Keshri and Others, . In similar circumstances, their Lordships have held that,

The appellants having fixed the scale and confirmed the respondents could not reduce the scale without giving any opportunity to the respondents

to be heard. Furthermore, the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board.

The said decision is applicable in all force to the case on hand. The above principles and material aspects have not been considered by the Tribunal

and the Tribunal has committed an error in dismissing the application of the petitioner.

7. In pith and substance, the learned Counsel for the petitioner has prayed for quashing the proceedings of the first respondent in Na.Ka. No.

437530/EH3/2000 dated 19.12.2000 and the proceedings of the second respondent in Na.Ka. No. 53/A4/2003 dated 28.1.2003.

8. Learned Additional Government Pleader appearing for the respondents 1 and 2 submits that as per G.O.Ms. No. 1023 Education dated

09.12.1993, the Secondary Grade Teachers are eligible for incentive increments for additional qualification of B.Ed. Degree after acquiring a basic

degree qualification and another incentive increments if they acquired P.G. Degree in M.A. or M.Sc., but the petitioners have first acquired M.A.

Degree without a basic degree viz., direct M.A. and later acquired B.Ed. Degree. Further the aforesaid G.O.Ms.No.1023 Education dated

09.12.1993 in and by which the incentive has been allowed, has been issued before the introduction of direct M.A. or B.Ed. and hence the same is brought to the notice of the Government for clarification of the orders and the Government after examining the matter in detail on various angle, accorded to sanction incentive to such direct M.A. also and orders have been issued permitting the sanction of incentive increment for direct M.A. and B.Ed. Degree qualification in G.O. No. 307 School Education dated 15.12.2000 and has given effect to the said G.O. only from the date of issuance of the same and the first respondent who is the competent authority to execute the Government Orders has issued executive instructions to modify the premium sanctioned as per the Government Order and to recover the amount paid as an incentive prior to that date and in turn the second respondent and the third respondent has issued necessary order modifying the previous orders and to recover the ineligible amount paid and therefore the orders issued in the impugned order are quite correct, valid and not illegal.

9. Continuing further, the learned Counsel for the first respondent and second respondent contends that there is no necessity to issue prior notice about the revisional order and recovery of ineligible orders as it has been issued only as per the specific order of the Government and every over payment and ineligible payment are liable to be recovered and no one will be spared from repaying the excess amount received and in short, has prayed for dismissal of the writ petition.

10. Even though on the side of the respondents 1 and 2 a plea is taken that the recovery of the amount already paid can be recovered without issuance of the prior notice, this Court is of the considered view that the petitioners by applying the principles of Natural Justice will have to be heard or given the notice before the actual recovery being effected and therefore the contention put forth by the respondents 1 and 2 to the contrary effect is of little avail and devoid of substance in the considered opinion of this Court.

11. At this juncture, this Court pertinently points out that a reading of G.O.Ms. No. 307 School Education Department dated 15.12.2000, refers to the award of incentive increment to persons who have acquired P.G. qualification through Open University and does not either expressly or

impliedly speaks of recovery being effected by the concerned authority in regard to the incentive increments already paid to the eligible teachers.

Therefore as a logical corollary, the proceedings of the first respondent in Na.Ka. No. 437530/EH3/2000 dated 19.12.2000, the proceedings of

the second respondent in Na.Ka. No. 53/A4/2003 dated 28.1.2003 and the proceedings of the third respondent dated 13.02.2003 ordering

recovery in respect of the petitioners are all not in order and the same are liable to be quashed and accordingly they are quashed to prevent an

aberration of justice and to promote substantial cause of justice and consequently this Court allows the writ petition without costs.

12. In the result, the writ petition is allowed. No Costs. The connected miscellaneous petition is closed.