

(2014) 10 MAD CK 0273

Madras High Court

Case No: Writ Petition No. 11734 of 2007

K. Arulmozhi

APPELLANT

Vs

Accounts Officer (Audit)

RESPONDENT

Date of Decision: Oct. 16, 2014

Hon'ble Judges: D. Hari Paranthaman, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D. Hariparthaman, J.

The petitioner joined as a Secondary Grade Teacher in the Government High School, Tirunelveli, Coimbatore District on 05.11.1976. While she was working as Secondary Grade Teacher, she was sanctioned with two sets of advance increments viz., two advance increments for passing B.Ed Degree with effect from 22.03.1986 and another two advance increments for passing M.A. Degree with effect from 16.06.1986. In total, she received 4 incentive increments for acquiring higher qualification viz., B.Ed and M.A. degrees. Thereafter, the petitioner acquired M.Ed qualification in the year 1987.

2. Subsequently, she was promoted to the post of Tamil Pandit Grade I, which is equivalent to BT Grade in 1992. After becoming Tamil Pandit Grade I, which is equivalent to BT Assistant, she claimed for two advance increments for acquiring M.Ed qualification in 1987. The said advance increments were given with effect from 07.10.1992, i.e., from the date of joining as Tamil Pandit and not from the date of acquiring the qualification in 1987.

3. Since the petitioner was given 4 incentive increments for acquiring B.Ed and M.A., degrees, she is not entitled to 2 advance increments for M.Ed., according to an audit objection. Based on the audit objection, recovery was sought to be made on the ground that the petitioner is entitled for 4 incentive increments in the entire service. The said audit objection was intimated to the petitioner by the Headmaster. The

petitioner has questioned the said audit objection.

4. A reply affidavit was filed by the respondents. It is stated that the petitioner is entitled to a maximum of 4 advance increments in the service and since she has already obtained 4 incentive increments, two more increments for acquiring M.Ed., is illegal and therefore, the excess amount paid was correctly sought to be recovered.

5. Heard both sides.

6. The learned counsel for the petitioner placed reliance on a Government Order in G.O. Ms.No.1023 Education Science and Technology Department, dated 09.12.1993. The Government made it clear that 5th and 6th advance increments paid already could not be touched. Hence, it is the contention of the learned counsel for the petitioner that the impugned audit objection is contrary to G.O. Ms.No.1023. The learned counsel would further submit that the impugned recovery was made without notice. It is well settled that no adverse order could be passed without hearing the person concerned.

7. On the other hand, the learned Additional Government Pleader has sought to sustain the impugned audit objection based on the reply affidavit.

8. It is relevant to extract Paragraphs 3 and 4 of G.O. Ms.No.1023.

"3. Based on the above orders of the High Court the individual was allowed the 5th and 6th increments in the G.O third read above. Person placed on similar circumstances had also, represented for sanction of 5th and 6th increments and it is considered that normally a decision taken in one case would of general applicability and will have to be made applicable in all similar cases. But the real intention of the original scheme as envisaged in G.O. Ms.No.42, Education, dated 10.01.1969 is to sanction advance increments for higher qualification to a maximum of 4 only. So, Government have decided to amend the original orders to bring out the intention of the scheme viz., the Government have decided to sanction the 5th and 6th advance increments allowed to the individual referred to above to all those who are placed under similar circumstances also.

4. Accordingly the Government direct that Secondary Grade Teacher who got 2 advance increments for B.T or B.Ed. qualification in the Secondary Grade Posts and then 2 advance increments for M.A or M.Sc. qualification in the post of B.T. Assistant shall be eligible for 2 more advance increments if they have already obtained the M.Ed., qualification in the post of B.T. Assistant. This concession shall be admissible only to the past cases i.e., to those who have already obtained the M.Ed., qualification in the post of B.T. Assistant. This concession shall be admissible only to the past cases i.e., to those who have already obtained the above qualification prior to the date of issue of these orders in future the maximum number of advance increments admissible to Teacher for obtaining higher qualification under the

orders first read above shall be four only."

9. As far as BT Assistants are concerned, if they acquired M.Ed qualification in the post of B.T. Assistant, the concession of granting 5th and 6th increments shall be permitted. As stated above, Tamil Pandit is also equivalent to B.T. Assistant cadre. In fact, one of the qualifications prescribed for the post of Tamil Pandit is B.Ed. In these circumstances, I am of the view that in view of G.O. Ms.No.1023, the impugned audit objection is bad and illegal.

10. As rightly contended by the learned counsel for the petitioner, this Court in W.P. No.34262 of 2006 dated 09.04.2010 [A.Thirugnanasambandam v. Director of School Education] held that incentive increments paid for Tamil Pandits, who obtained further qualification prior to 09.12.1993 are entitled to incentive increments. In this regard, paragraph 7 of the judgment is extracted hereunder:-

"7. The learned counsel for the petitioner also brought to the notice of this Court that the G.O. Ms.No.17, dated 08.01.2008 wherein also, the Tamil Pandits who obtained further qualification prior to 09.12.1993 were all given the incentive increments and all the 18 teachers and 5 Tamil Pandits were given the benefit. Above all these things as far as the question of recovery is concerned, it should be preceded by a mandatory notice. A reading of the impugned order would categorically reveal that no notice was sent to the petitioner prior to issuance of the impugned order. Therefore, the impugned order is violative of principles of natural justice as no notice was given to the petitioner. Moreover, the petitioner is now retired and hence the question of recovery at this time does not arise."

11. It is stated that the petitioner had already reached the age of superannuation and the amount was withheld from his terminal benefits.

12. In view of the above said reasons, the writ petition is allowed and the impugned memo is quashed. A direction is issued to the respondents to pay the amount towards incentive increments payable for M.Ed qualification and if it is withheld, repayment shall be made within a period of eight weeks from the date of receipt of a copy of this order. No costs.