

S.Jayalakshmi. Vs. Additional Assistant Elementary

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Court : Chennai

Decided On : Jul-26-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.5879 of 2007 (O.A.No.3400 of 2002)

Appellant : S.Jayalakshmi

Respondent : Additional Assistant Elementary

Advocate for Def. : Mr.R.Vijayakhumar, Adv

Advocate for Pet/Ap. : Mr.V.Gangatharan, Adv

Judgement :

Prayer: Writ petition is filed under Article 226 of [Constitution of India](#) for issuance of a Writ in the nature of Certiorari, calling for the records connected with the orders of the respondent in RC.593/Aa1/2001 dated 15.4.2002 and to quash the same and to direct the respondents to restore the orders in No.593/Aa1/2001 dated 27.04.2001 insofar as the petitioner is concerned.

ORDER

1. The petitioner has approached this Court with a prayer for issuance of a writ in the nature of Certiorari, to quash the order RC.593/Aa1/2001 dated 15.04.2002, in ordering recovery of increment granted to the petitioner for acquiring higher qualification.

2. The petitioner joined as Secondary Grade Assistant on 12.12.1990, in the Panchayat Union Elementary School, Pallipandalam (Urudu) in Sankarapuram Panchayat Union. The petitioner acquired the qualification of M.A. Degree from Annamalai Open University in 1994-1995 and B.Ed. degree in 1995-1996. The petitioner was granted four advance increments two each for acquiring M.A. & B.Ed. degrees.

3. The case of petitioner is that subsequently, vide impugned order, two increments for acquiring M.A. Qualification from Open University was withdrawn, on the ground that the petitioner was not entitled to the grant of incentive increments for acquiring higher qualification from the Open University. The amount paid to be petitioner towards these increments was also ordered to be recovered.

4. Learned counsel for the petitioner has challenged only the recovery part of impugned order, on the ground, that the order, though affecting the civil rights of petitioner, has been passed without complying with the principle of natural justice, and on the ground, that the benefit even if granted wrongly, cannot be withdrawn with retrospective effect, in absence of allegations of fraud or misrepresentation.

5. Learned Additional Government Pleader is unable to controvert the contention, that no notice was issued before passing the order of cancellation and ordering recovery of two increments to the petitioner.

6. On consideration, I find force in the contention raised by the learned counsel for the petitioner. It is now well settled law, that the benefit even if wrongly granted, cannot be withdrawn in absence of allegations of fraud or misrepresentation and that the order affecting civil rights cannot be passed without following principle of natural justice.

7. For the reasons stated herein above, the writ petition is allowed. The order of recovery alone is ordered to be quashed, but with no order as to costs.

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