



W.P.No.27411 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.27411 of 2010

K.Murugesan

... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Represented by the Secretary to the Government,
Adi Dravidar & Tribal Welfare Department,
Fort St.George, Chennai – 9.
- 2.The Director of Adi Dravidar and Tribal Welfare,
Chepauk, Chennai – 5.
- 3.The District Adi Dravidar Welfare Officer,
Cuddalore District, Cuddalore.
- 4.The Special Tahsildar
Adi Dravidar Welfare,
Vridhachalam Taluk,
Cuddalore District.
- 5.The Accountant General,
Tamil Nadu, Teynampet, Chennai – 18.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of



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India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondents in relation to the proceedings issued in Na.Ka.No.W.7/73448/2000 dated 12.04.2001; in Na.Ka.No.A/151/01 dated 22.11.2005 and in No.AG(A&E)/PEN P09/5/MI33-1036/RTD/2007-2008/ dated 09.11.2007 and quash the same and issue a consequential direction to the respondents to release an amount of Rs.3,07,577/- recovered from the pensionary benefits to the petitioner with interest at 18% per annum and to restore the pay of the petitioner at Rs.2000/- as on 09.09.1990 in the scale of pay of Rs.2000-3200 in the post of Primary School Headmaster and to grante consequential benefits including the arrears of pay and pension and consequently grant such other relief.

For Petitioner : Mr.R.Saseetharan

For RR1 to 4 : Mr.S.Ravichandran
Additional Government Pleader

For R5 : Mr.V.Murali

ORDER

This Writ Petition had been filed challenging the proceedings issued in Na.Ka.No.W.7/73448/2000 dated 12.04.2001; in Na.Ka.No.A/151/01 dated 22.11.2005 and in No.AG(A&E)/PEN P09/5/MI33-1036/RTD/2007-2008/ dated 09.11.2007 and quash the same and issue a consequential direction to the respondents to release an amount of Rs.3,07,577/- recovered from the



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pensionary benefits to the petitioner with an interest at 18% per annum and to restore the pay of the petitioner at Rs.2000/- as on 09.09.1990 in the scale of pay of Rs.2000-3200 in the post of Primary School Headmaster and to grant consequential benefits including the arrears of pay and pension and consequently grant such other relief.

2. Heard Mr.R.Saseetharan, learned counsel for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.V.Murali, learned counsel appearing for the 5th respondent.

3. The learned counsel for the petitioner would submit that the petitioner was initially appointed as a Secondary Grade Teacher on 09.09.1970 in the Department of Adi Dravidar and Tribal Welfare at Senthannadu, Ulunthurpet Taluk, Villupuram District. Thereafter, he was posted as a Primary School Headmaster at Adi Dravidar Welfare Primary School, Senthannadu, Ulunthurpet Taluk on 06.12.1975 and had worked in the said capacity in the said school till 05.07.1979. Thereafter, he was



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transferred as a Primary School Headmaster at Kalathur Ulunthurpet Taluk where he worked till 12.08.1980 and was again retransferred and posted as Primary School Headmaster at Adi Dravidar Welfare Primary School, Senthanadu on 13.08.1980, where he worked till 10.12.1983, where again he was transferred and posted as Primary School Headmaster on 14.12.1983 at Adi Dravidar Welfare Primary School, Kattunemeli, Ulunthurpet Taluk and worked there till 01.11.1989. He was thereafter, transferred and posted as Secondary Grade Teacher in the same school on 02.11.1989 and worked in the said capacity till 30.11.1992 and thereafter, again promoted as Primary School Headmaster on 01.12.1992 at Adi Dravidar Welfare Primary School at Avaianoor, Panrutti Taluk where he worked in the said post till 30.06.1995 and thereafter, he was posted as Primary School Headmaster at Adi Dravidar Welfare Primary School, Karnatham, Viruthachalam Taluk, Cuddalore District on 03.07.1995 and had superannuated on 31.03.2005.

4. The Government of Tamil Nadu had awarded a separate and higher pay scale to the post of Primary School Headmasters and to the post of Secondary Grade Teachers with effect from 01.06.1988. As per the



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recommendations of the 5th Pay Commission under the G.O.Ms.No.666, dated 26.07.1989. The Director of Elementary Education, in his proceedings dated 17.02.1990 had directed that the persons who are holding the post of Primary School Headmasters as on 01.06.1988 are allowed to continue as Primary School Headmasters continuously and they are deemed to have been appointed as Primary School Headmasters and the appointing authorities are directed to issue orders and thereafter, on 01.06.1988, the post of Primary School Headmaster shall be filled up as per the seniority in the post of Secondary Grade Teachers as the post of Primary School Headmaster became promotion post on awarding higher scale of pay to the post of Primary School Headmaster than the post of Secondary Grade Teacher with effect from 01.06.1988. The Department of Adi Dravidar and Tribal Welfare had adopted the said orders and Rules issued by the Education Department.

5. The Government, by G.O.Ms.No.1381, dated 05.10.1990, directed the teachers who were in the position as Primary School Headmaster as on 01.06.1988 are entitled to count the service rendered in



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the post of Secondary Grade Teachers as well as Primary School Headmasters for the award of Selection Grade and Special Grade Pay, in the post of Primary School Headmasters. In view of the aforesaid proceedings from the Director of Elementary Education, dated 17.02.1990, the petitioner should have been allowed to continue as a Primary School Headmaster which he was holding on 01.06.1988 but, however, he was reverted from the post of Secondary Grade Teacher on 02.12.1989 after the Government had declared the post of Primary School Headmaster as promotional post on awarding higher scale of pay. The reversion from the post of Primary School Headmaster involves loss of emoluments and was put to monetary loss. The petitioner had again being promoted as a Primary School Headmaster on 01.12.1992. Therefore, he would submit that he should be given pay protection by applying G.O.Ms.No.1381, dated 05.10.1990.

6. By proceedings, dated 23.01.1997, the District Adi Dravidar and Tribal Welfare Officer/3rd respondent herein had considered the issue in its proper prospective and held that he was entitled for fixation of pay by applying G.O.Ms.No.1381, dated 05.10.1990 on par with his juniors. By



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proceedings, dated 12.04.2001, the 3rd respondent had refixed the pay of the petitioner at a lower level and directed refund of Rs.98,382/- on the ground that his pay had been refixed wrongly and that the Audit Department had raised an objection since, there is no entry in the Service Register to show that he was working as a Headmaster as on 01.06.1988 and on the ground that G.O.Ms.No.1381, dated 05.10.1990 was set aside by this Court. However, the order of recovery was not given effect to till the dates of his retirement from service. By proceedings, dated 22.11.2005 i.e, after the date of retirement of the petitioner, the respondent had reduced the pay of the petitioner from Rs.1760/- to Rs.1500/- as on 01.06.1988 and from Rs.2000/- to Rs.1760/- as on 09.09.1990 on the ground that the pay fixation was found to be wrong by the Audit and recovery order was issued by the 3rd respondent on 12.04.2001.

7. With this background, even though the petitioner had superannuated as early as in March 2005, the petitioner had not been paid his terminal benefits. Even the pension proposal was not sent by the 3rd respondent to the 5th respondent. The petitioner was coerced to give an



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undertaking that his excess sum that had been paid to him shall be recovered from the terminal benefits. Since, as admitted earlier, no pension has been paid by him, the petitioner had accepted to give his consent and receive the terminal benefits. He would submit that the entire recovery pursuant to the superannuation is wholly contrary to the law as laid down by this Court as well as the Hon'ble Apex Court and therefore, he would seek to set aside the order impugned in this Writ Petition and issue direction as claimed by the petitioner.

8. Countering his arguments, Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 to 4 would heavily contend that the wrong pay fixation has been intimated to the petitioner as early as in the year 2001 and he had not challenged the same. The further order passed by the Special Tahsildar in November 2005 is consequential order in fixing the pay for his earlier service. When he had not challenged the original order of recovery, the petitioner cannot maintain the Writ Petition challenging the present order and subsequent order of recovery and he had also consented for recovery of such excess payment



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from his terminal benefits and now he cannot be heard to say that the petitioner is not entitled to repay the amount.

9. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

10. The facts regarding the petitioner's service has been admitted by the respective parties. It is also not in dispute that the petitioner had been made an excess payment. At this juncture, it would be relevant to peruse the decision of the Government in G.O.Ms.No.160 School Education Department (G-Department), dated 23.08.2005. For better appreciation, the aforesaid G.O. is extracted hereunder:-

தொடக்கக் கல்வி - தொடக்கப் பள்ளித்தலைமை
ஆசிரியர்களுக்கு தேர்வுநிலை/ சிறப்பு நிலை வழங்குவது
குறித்து ஆணையிடப்பட்ட அரசாணை நிலை எண்.185, பள்ளிக்
கல்வித்துறை, நாள் 16.12.2002-க்கு தெளிவாணை -
வெளியிடப்படுகிறது.

பள்ளிக் கல்வி (ஜி) துறை



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அரசாணை (நிலை) எண். 160

நாள் 23.08.2005

படிக்கப்பட்டது

அரசாணை (நிலை) எண்.185, பள்ளிக்கல்வித்துறை நாள்
16.12.2002

ஆணை

தொடக்கப்பள்ளி தலைமை ஆசிரியர்களுக்கு தேர்வுநிலை/ சிறப்புநிலை அனுமதிப்பது குறித்து ஆணையிடப்பட்ட பார்வையில் படிக்கப்பட்ட அரசாணையை எதிர்த்து தொடரப்பட்ட தொகுப்பு வழக்குகள் சென்னை உயர்நீதிமன்றத்தில் நிலுவையில் உள்ளன. மேற்கண்ட அரசாணையினை செயல்படுத்தி அதிகப்படியாக வழங்கப்பட்ட தொகையை பிடித்தம் செய்வதால் ஆசிரியர்களுக்கு பாதிப்பு ஏற்படுவதாக பல்வேறு ஆசிரியர் சங்கங்கள் அரசுக்கு முறையீடு செய்தன.

2.இவ்வாறான கோரிக்கைகளை அரசு கவனமுடன் ஆய்வு செய்து, அரசாணை (நிலை) எண்.185, பள்ளிக் கல்வித் துறை நாள் 16.12.2002-க்கு கீழ்க்கண்ட தெளிவுரையினை வழங்கி ஆணையிடுகிறது.

(i) 1.6.88 அன்று தொடக்கப்பள்ளித்தலைமை ஆசிரியர்களாக பணிபுரிந்த 1.8.2005-க்குப் பிறகும் தொடக்கப்பள்ளி தலைமையாசிரியர்களாக தொடர்ந்து பணிபுரிபவர்களைப் பொறுத்தவரை.

1.08.2005 அன்று உள்ளவாறு அவர்கள் தொடக்கப்பள்ளி தலைமையாசிரியர்களாக பணிபுரிந்த காலத்தினை மட்டும் கணக்கில் கொண்டு தேர்வுநிலை/ சிறப்புநிலை கணக்கிடலாம் 1.8.2005 அன்று அவர்கள் பெற்றுவந்த அடிப்படை ஊதியத்தினை அவர்களுக்கு தகுதியுள்ள தேர்வுநிலை/சிறப்புநிலையில் பொருத்தலாம். அவ்வாறு பொருத்துவதற்கான ஊதியநிலை (stage) தேர்வுநிலை/சிறப்பு நிலையில் இல்லையெனில், அதற்கு முந்தைய நிலையில் (Lower stage) பொருத்தி வேறுபடும்



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மீதமுள்ள ஊதியத்தினை தனி ஊதியமாக (Personal Pay) அவர்கள் ஓய்வு பெறும் வரையில் அனுமதிக்கலாம்.

(ii) 1.6.1988 அன்று தொடக்கப்பள்ளித் தலைமை ஆசிரியர்களாக பணிபுரிந்து 1.8.2005-க்கு முன்னதாக ஓய்வு பெற்றவர்களைப் பொறுத்தவரை:-

சிறப்பு நிகழ்வாக, அவர்கள் ஓய்வு பெற்றபோது இறுதியாகப் பெற்றிருந்த அடிப்படை ஊதியத்தின் அடிப்படையில் ஓய்வூதியம் நிர்ணயம் செய்யப்படலாம் அவர்களது தேர்வுநிலை/ சிறப்புநிலையினை மறுபடியும் திருத்தி நிர்ணயம் செய்ய வேண்டியதில்லை.

(iii) அரசாணை நிலை எண்.1381 கல்வி நாள் 5.10.90 ஏற்கனவே நீதிமன்றத்தால் இரத்து செய்யப்பட்டு திருத்திய ஆணை வெளியிடப்பட்டதால், அவ்வாணையின் அடிப்படையில் இனி எந்த ஒரு தொடக்கப்பள்ளித் தலைமை ஆசிரியருக்கும் புதிதாக மறு ஊதிய நிர்ணயம் செய்யக்கூடாது.

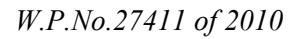
3.சென்னை உயர்நீதிமன்றத்தில் நிலுவையில் உள்ள ரிட் மனுக்களின் தொகுப்பு வழக்குகளின் இறுதி ஆணைக்கு உட்பட்டு இத்தெளிவுரை வழங்கப்படுகிறது.

4.இவ்வாணை நிதித்துறையின் அ.சா.எண்.2815/FS-/P/2005 நாள் 15.8.2005ல் பெறப்பட்ட இசைவுடன் வெளியிடப்படுகிறது.

(ஆளுநரின் ஆணைப்படி)

கிரிஜா வைத்தியநாதன் அரசுச் செயலாளர்

11. A reading of the aforesaid G.O. it seems to have been passed by taking into consideration various proceedings that have been pending before this Court in respect of the recovery that is sought to be made by the



12. Therefore, the aforesaid Clause-II of the Government order will be applicable to the petitioner. As per the Government order, as a general case, the Government had decided that such persons falling under Category-II their pension and terminal benefits would be calculated on the basis of the basic pay that they had been receiving at the time of their retirement and that there will be no refixation of pay of such persons in view of G.O.Ms.No.1381, dated 05.10.1990 had been set aside by this Court. No further orders have been issued. The G.O. also contemplates that their



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Selection Grade and Special Grade need not be revisited again. From the order passed by the 4th respondent after the superannuation of the petitioner the 4th respondent had refixed the pay of the petitioner contrary to the policy decision that has been taken by the Government in the above extracted G.O. and had sought recovery of the amount that has been excessively paid. From a reading of the Government order extracted supra one another object in issuing the aforesaid G.O. is clear that if such salary is refixed then the orders of recovery would have to be passed against the retired employees. This is very well implied from the aforesaid Government order. When there is a bar in refixing the salary that had been received by the retired employees, the order passed by the 4th respondent is wholly illegal and would necessarily have to be interfered with and whatever recovery had been made based upon the aforesaid order would have to be necessarily refunded. Further, it is also pertinent to note that the Hon'ble Apex Court in a judgment rendered in *State of Punjab and Others Vs Rafiq Masih & Others* reported in (2015) 4 SCC 334 (White washer's case) paragraph 18 clause -2 had held that there can be no recovery made from a retired employee even if such payment had been made by mistake at the hands of



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the employer. For better appreciation, the relevant paragraph is extracted hereunder.

“ 18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's



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right to recover.”

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13. In the present case also it is not on the fault of the petitioner that the petitioner had been paid excess payment. No recovery had been made till his date of superannuation. Clause II of the paragraph extracted above clearly prohibits recovery of any amount that had been mistakenly being made at the hands of the employer from a employee who will be superannuating within a period of one year or who had superannuated. In the present case as factually no recovery had been made from the petitioner till his superannuation. No recovery could have been made and the recovery made by the respondent is illegal. Therefore, will have to necessarily be directed to refund the aforesaid amount, however, with an interest at the rate of 7% per annum and the said refund shall be made within a period of eight (8) weeks from the date of a receipt of a copy of this order. Further, since, the Government had directed not to refix the salary of the petitioner, the pension shall also be calculated based on the last drawn pay as referred to in G.O.Ms.No.160 School Education Department (G-Department), dated 23.08.2005 and pay the difference of the pension that the petitioner would be entitled to within a period of eight (8) weeks from the date of the receipt

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of a copy of this order.

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14. In fine, this Writ Petition is allowed and order impugned in this Writ Petition is allowed with the aforesaid directions as indicated above. However, there shall be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No



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K.KUMARESH BABU,J.

Gba

To

- 1.The Government of Tamil Nadu,
Represented by the Secretary to the Government,
Adi Dravidar & Tribal Welfare Department,
Fort St.George, Chennai – 9.
- 2.The Director of Adi Dravidar and Tribal Welfare,
Chepauk, Chennai – 5.
- 3.The District Adi Dravidar Welfare Officer,
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- 4.The Special Tahsildar
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- 5.The Accountant General,
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