

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1690 of 2014
and
M.P.No.1 of 2014

The Secretary,
Thiruvalluvar Aided Middle School,
Pannapatu,
Chidambaram Taluk,
Cuddalore District.

...Appellant

Vs.

1. R.Renganathan
2. The State of Tamil Nadu,
rep by its Secretary,
School Education Department,
Secretariat, Fort St. George,
Chennai-600 009.
3. The Director of Elementary Education,
DPI Compound,
Chennai-600 006.
4. The Assistant Elementary Educational Officer,
Keerapalayam,
Chidambaram Taluk,
Cuddalore District.

...Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 22.08.2011 made in W.P.No.4394 of 2009 presented under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records connected in Prof.Na.Ka.No.11723/L3/2008, dated 16.10.2008 of the second respondent respondent and quash the same and direct the respondents to consider the claims of the petitioner to restore the scale of pay Rs.4500-7000 as per G.O.Ms.No.427, Finance (Pay Cell) Department, dated 28.8.1998 instead of Rs.4000-6000 and fix his pension based on the pay last drawn by

the petitioner i.e. Rs.6000/- and consequently direct the respondents to refund the recovery amount to the petitioner.

For Appellant : Mr.C.K.M.Appaji

For Respondents : Mr.K.Arumugam
for Mr.G.Elanchezhian for R-1

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The writ petitioner / first respondent herein challenged the legality and validity of the order in Na.Ka.No.11723/L3/2008 dated 16.10.2008 passed by the third respondent herein, claiming restoration of the pay scale of Rs.4500-7000 as per G.O.Ms.No.427, Finance (Pay Cell) Department dated 28.8.1998 granted earlier and fixation of pension on the basis of the last drawn pay and further to refund the amount recovered by the appellant herein illegally.

2. The writ court allowed the writ petition filed by the first respondent herein holding that the writ petitioner was entitled to pay scale as per the G.O.Ms.No.427 dated 28.8.1998 and further directed the appellant and the respondents 2 to 4 herein to refix the pay scale accordingly, pay arrears and also refix the pension.

3. Feeling aggrieved, the fourth respondent therein has come up before this court by way of the instant intra-court appeal necessarily on the ground that the pay scale of the writ petitioner was fixed at Rs.4300-100-6000 under G.O.Ms.No.162 dated 13.4.1998. Subsequently, on the basis of the recommendation made by the One Man Commission, the Government issued G.O.Ms.No.427 dated 28.8.1998, fixing the pay scale of Secondary Grade Teacher / Physical Education Teacher and all other categories of teachers in the Secondary Grade Teacher Grades at Rs.4500-7000. Under the said G.O., the pay scale of the writ petitioner was fixed at Rs.4500-125-7000 on 5.8.1998. After his retirement on attaining the age of superannuation on 31.3.2003, it was discovered by the office of the Accountant General that he was not entitled to the revision of pay scale under the provisions of G.O.Ms.No.427 dated 28.8.1998 and as such, by a clarification, his pay scale was refixed. It is further contended that the pay scale of the writ petitioner / first respondent herein was refixed by mistake and as such, he was not entitled to the benefit, which he had received mistakenly.

4. The learned counsel appearing for the first respondent herein would submit that the pay scale of the first respondent has been lowered down without affording an opportunity of hearing,

exparte. Thus, the order under challenge before the writ court was not sustainable in law and as such, the learned Single Judge has rightly quashed the same and directed the appellant as well as respondents 2 to 4 herein to restore the same pay scale with a consequential relief of fixation of pension and others.

5. The bone of contention is the order in Na.Ka.No.11723/L3/2008 dated 16.10.2008, whereunder the pay scale of Rs.4500-125-7000 as per G.O.Ms.No.427 dated 28.8.1998 granted earlier was refixed and it was decided to grant him special grade pay of Rs.4000-100-6000 reducing the earlier pay scale and accordingly, his pension was also fixed. It was directed to recover the excess payment made from the pensionary benefits.

6. The learned Single Judge, having heard the parties and examined the question of law, came to the conclusion that without notice the pay scale of the writ petitioner was reduced to Rs.4300-6000 after his retirement on 31.3.2003. It is well settled principle of law that any order prejudicial to the employee cannot be passed without affording an opportunity of hearing to the said employee. The pay scale was revised on account of objection raised by the Accountant General's office and as a sequel, even recovery was ordered from the pensionary benefits. The said action and the order is unsustainable in the eyes of law.

7. We have considered the rival submissions of the learned counsel appearing for the parties and also perused the facts and pleadings.

8. We do not find any error, irrationality or illegality in the order passed by the learned Single Judge, which is sought to be impugned in this appeal. It is well settled principle of law that if a particular pay scale has been fixed by the authorities for the employee and also that benefit was given for a long period, the same cannot be withdrawn without affording an opportunity of hearing. It is also not the case of the appellant before us that the writ petitioner was granted higher pay scale on account of misrepresentation made by the writ petitioner.

9. The appellant had also not taken steps to rectify the mistake, if any, within the short period of time. After the writ petitioner attained the age of superannuation, at the time of pension fixation, the issue of pay scale was considered by the authorities unilaterally and pension was fixed on the basis of reduced pay scale, which the writ petitioner was never paid. It is a well settled proposition that the pension is computed on the basis of the last drawn pay. If there is re-fixation to the prejudice of the employee, the employee is entitled to an opportunity of hearing, which has not been done in this case. Thus, the impugned order passed by the

learned Single Judge is flawless, warranting no interference.

10. Resultantly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Secretary,
The State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Director of Elementary Education,
DPI Compound,
Chennai-600 006.
3. The Assistant Elementary Educational Officer,
Keerapalayam,
Chidambaram Taluk,
Cuddalore District.

1 CC to Mr.C.K.M.Appaji, Advocate SR.No. 1987

1 CC to the Government Pleader, SR.No. 1396

1 CC to Mr.G.Elanchezhian, Advocate SR.No. 1431

TEJ (CO)

PSI (28.01.2015)

W.A.No.1690 of 2014