

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

REVIEW APPLICATION NO.212 of 2013
IN W.P.NO.8900 of 2011 AND M.P.NO.1 OF 2013

1. The Assistant Elementary
Educational Officer, Palacode,
Dharmapuri District,
 2. The Government of Tamil Nadu,
(rep.by its Secretary to Government,
School (Education) Department,
Secretariat, Chennai - 9.
- ... Petitioners

Vs.

1. A.Pachiappan,
 2. The Principal Accountant General
(A&E), Tamil Nadu,
Chennai - 600 018.
- .. Respondents

PRAYER: Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C. against the Order dated 10.06.2013 made in W.P.No.8900 of 2011 on the file of this Court.

For Petitioners	: Mr.D.Krishnakumar Spl.Govt.Pleder
For Respondents	: Mr.M.Ravi for R.1 No Appearance for R.2

ORDER

This review application is filed by the Assistant Elementary Education Officer, Pallacode, Dharmapuri District and the Secretary to

Government, School (Education) Department, Government of Tamil Nadu against the Order dated 10.06.2013 made in W.P.No.8900 of 2011, in and by which, this Court applying G.O.Ms.No.202/School Education G2 Department dated 24.09.2008 quashed the orders passed by the Principal Accountant General (A&E), Tamil Nadu, Chennai - 2nd respondent herein in Pen.16/I/11603603/9-10/ADK, 05.03.2010 and Pen.16/V/21603603/ Retd./0-11/ADK/102 dated 02.06.2010 and the proceedings Mu.Nu.No.65/A1/2009, dated 18.10.2010 of the 1st review petitioner seeking recovery of a sum of Rs.6,75,993/-, being the excess pay and allowances drawn by the writ petitioner/1st respondent herein due to fixation of pay giving an answer to the lis that the 1st respondent was entitled to get a benefit of G.O.Ms.No.202/School Education (G2) Department dated 24.9.2008 holding that the 1st respondent had worked as Primary School Headmaster during the relevant period from 1.6.1976 to 2.9.1980.

2. Mr.D.Krishnakumar, learned Special Government Pleader appearing for the review petitioners submitted that the writ petitioner/ 1st respondent herein by making some misrepresentation has filed writ petition stating that he was working as a Secondary Grade Assistant from 23.3.1972 to 24.4.1972 and again worked as Primary School Headmaster, Panchayat Union School from 10.7.1972 to 30.4.1973 and again worked

as Secondary Grade Assistant, Panchayat Union Elementary School from 19.7.1973 to 31.8.1973 and again worked as Primary School Headmaster in Panchayat Union Elementary School from 1.9.1973 to 30.10.1973 whereas the official records clearly show that the 1st respondent was ousted from service from the post of Higher Grade Teacher on 20.4.1972. But, this fact has been completely concealed in the writ petition filed for quashing the impugned orders passed by the Principal Accountant General and the Assistant Elementary Educational Officer, Palacode, therefore, as the 1st respondent, seeking equitable relief, had come to this Court with unclean hands, this Court should recall the order dated 10.6.2013 made in W.P.No.8900 of 2011, learned Special Government Pleader, Mr.D.Krishna Kumar, would further submit that when the 1st respondent had retired from service on 31.1.2010, the pension papers of the 1st respondent were sent for payment of pension to the 2nd respondent. On meticulous scrutiny of the pension papers forwarded by the Department, it was found that the 1st respondent was given huge concession and benefits as per G.O.Ms.No.202 School Education (G2) Department, dated 24.09.2008, although he served as Primary School Headmaster for the period commencing from 1.6.1976 to 2.9.1980. On the other hand, there is no such record to show that the 1st respondent at any point of time has worked as Primary School Headmaster and he would further submit that if the 1st respondent is able to show that at any point of time he has been promoted to the post of Primary School Headmaster he

would be in a position to support the order passed by this Court in W.P.No.8900 of 2011. But till date, the 1st respondent had never been promoted to the post of Primary School Headmaster. Therefore, the review petition is filed by the petitioners raising serious objections with regard to the averments made by the 1st respondent in the writ petition and that the 1st respondent is not entitled to get the benefit of G.O.Ms.No.202, School Education (G2) Department dated 24.9.2008 as the said Government Order would be applicable only to the persons who worked as Primary School Headmasters prior to 1.6.1988 in a Panchayat Union, and then transferred as Secondary Grade teachers to other Panchayat Unions and for others it cannot be applied. He would further submit that Volume II of the Service Register of the 1st respondent maintained in the Office of the Pennagaram Panchayat union mentions that the 1st respondent has served as Primary school Headmaster from 1.6.1976 to 2.9.1980 and that has been noted by the then Assistant Elementary Educational Officer, Pennagaram, who was on duty on 17.3.2010. Only on the basis of the said wrong entry made by the then Assistant Elementary Educational Officer, Pennagaram in the Service register of the 1st respondent, the earlier affidavit was filed by the 1st review petitioner. Now, the entire service particulars of the 1st respondent in Volume I of the Service Register had been completely scanned through and the scrutiny of all the entries in the office records reveal that the 1st respondent has only served as In-charge Headmaster during the period from 1.6.1976 to 2.9.1980. The

said service has been calculated as the Service rendered by the Secondary Grade Teacher. Therefore, on the basis of a wrong entry made earlier by the Assistant Elementary Educational Officer, a wrong counter affidavit has been filed. On the basis of the wrong counter affidavit, an impression was given to this Court that the 1st respondent was entitled to the benefit of G.O.Ms.No.202, School Education (G2) Department dated 24.9.2008. Therefore, the present review petition has been filed to recall the earlier order dated 10.6.2013 in W.P.No.8900 of 2011. As the 1st respondent has been paid a sum of Rs.6,75,993/-, which appears to be a huge amount, the same should be ordered to be refunded by confirming the orders by the Principal Accountant General (A&E), Tamil Nadu, Chennai - 2nd respondent herein in Pen.16/I/11603603/9-10/ADK, 05.03.2010 and Pen.16/V/21603603/ Retd./0-11/ADK/102 dated 02.06.2010 and the proceedings Mu.Nu.No.65/A1/2009, dated 18.10.2010 of the 1st review petitioner - Assistant Elementary Educational Officer. He has also placed before this Court the official records to prove the case of the review petitioners that the 1st respondent at no point of time has served as Primary School Headmaster during the relevant period commencing from 1.6.1976 to 2.9.1980. In support of his submission that no one shall be allowed to come to this Court with unclean hands the learned Special Government Pleader has placed on record a judgment of the Andhra Pradesh High Court, wherein, after considering the judgments of the Hon'ble Supreme Court, it was held that no Court will allow itself to

be used as an instrument of fraud, and no Court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud.

3. Refuting the above submissions made by the learned Special Government Pleader, Mr.Ravi, learned counsel appearing for the writ petitioner/1st respondent herein submitted that the only issue brought by the review petitioners before this Court is, whether the 1st respondent has worked as Primary School Headmaster during the period from 1.6.1976 to 2.9.1980 for a period of four years and consequently whether he is entitled to get the benefit of G.O.Ms.No.202 School Education (G2) Department dated 24.9.2008, which says that a person, who worked as Primary School Headmaster prior to 1.6.1976 is entitled to the benefit of the said Government Order. In support of his submission, he would submit that keeping aside the case of the 1st respondent for a moment, if the pleadings of the review petitioners is taken at the face value, more particularly, the stand taken by the Assistant Elementary Educational Officer, Palacode in paragraph No.6 of the counter affidavit filed before this Court in W.P.No.8900 of 2011, it clearly crystallizes the lis raised before this Court by the review petitioners. The 1st review petitioner - Assistant Elementary Educational Officer in paragraph No.6 of his counter has stated that the 1st respondent worked as Second Grade Middle School Headmaster with effect from 1.6.1976 to 2.9.1980. He has further admitted

that during that period he did not work as B.Ed Graduate Middle School Headmaster. When the Assistant Elementary Educational Officer, Palacode has supported the case of the 1st respondent on the basis of a letter No.65/A1/2009 dated 5.4.2010 and replied to the queries of the Accountant General, Chennai that the 1st respondent did not work as B.Ed qualified Middle School Headmaster during the period 1.6.1976 to 2.9.1980 and he worked only as Secondary Grade Middle School Headmaster, therefore the pay fixation done in respect of the 1st respondent applying G.O.Ms.No.202 School Education (G2) Department, dated 24.9.2008 was correct, without producing the said letter before this Court, when the then Assistant Elementary Educational Officer, Palacode had recommended the case of the 1st respondent to the Audit Department on the basis of the letter dated 5.4.2010, it is not open to the review petitioners to seek any indulgence from this Court to recall the order dated 10.6.2013 passed by this Court.

4. Again, focusing on the additional affidavit filed by the review petitioners, he has submitted that even in the present review petition, additional affidavit filed by the Assistant Elementary Educational Officer, Palacode clearly mentions that the 1st respondent has worked as Primary School Headmaster from 1.6.1976 to 2.9.1980 as per the note mentioned in Volume II of the Service Register made by the then Assistant Elementary Educational Officer, Pennagaram, who was on duty till

17.3.2010. Having said so, the review petitioners in order to deny the benefit of the 1st respondent to the said G.O, cannot advance any argument before this Court that the said entries revealed that the 1st respondent has not served as In-charge Headmaster during the period from 1.6.1976 to 2.9.1980. Even if the case of the review petitioners is taken on record, it is not known how a teacher was allowed to function as In-charge Headmaster for a long period from 1.6.1976 to 2.9.1980 and he would further submit that when the School in which he was working as a Primary School Headmaster was upgraded as Middle School only in the year 2004, it goes without saying that the School in Emanur, where the 1st respondent worked, till it was upgraded in the year 2004, was admittedly even on record, functioned as Primary School, the order dated 10.6.2013 passed by this Court cannot be found fault with.

5. This Court also finds some merits on the submissions made by the learned counsel appearing for the 1st respondent/writ petitioner. The reason is, when the review petitioners have come to this Court seeking to review the order passed by this Court, it is well settled legal position that they should come to this Court pointing out to the error apparent on record. As I mentioned above, the only issue needs adjudication is whether the 1st respondent had worked as Primary School Headmaster for the period commencing from 1.6.1976 to 2.9.1980. The additional affidavit dated

27.3.2015 filed by the Assistant Elementary Educational Officer, Palacode also shows that as per Volume II of the Service Register, the 1st respondent had served as a Primary School Headmaster from 1.6.1976 to 2.9.1980, on the basis of the note put up by the Assistant Elementary Education Officer, Pennagaram, who was on duty till 17.3.2010. But the further pleading made by the Assistant Elementary Educational Officer in the same affidavit shows that the aforesaid entries revealed that the 1st respondent had served as In-charge Headmaster during the period from 1.6.1976 to 2.9.1980. Even the Department of Education, Pennagaram Range has also issued a Certificate to the 1st respondent certifying that the 1st respondent, Panchyat Union Middle/Primary School Headmaster, Eamanur attended the three days voluntary seminar in English language teaching for Standards III to V at Government Higher Secondary School, Pennagaram from 2.10.1978 to 4.10.1978. When the review petitioner Department has every time issued orders saying that the 1st respondent was serving as a Primary School Headmaster, it is too late to ask for recovery of the amount paid already to the 1st respondent. When the 1st respondent had served as Primary School Headmaster, even as In-charge Primary School, Headmaster for the said period, for which he has been paid with the remuneration, this Court finds that the records produced before this Court do not support clearly the case of the review petitioners, hence, this Court is not able to accept the prayer for review. Further, no error apparent on the basis of the record has been made out.

6. For the foregoing reasons, the review application fails and the same is dismissed .However, there is no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

06.07.2015

Index:Yes/No
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To
1. The Principal Accountant General
(A&E), Tamil Nadu,
Chennai - 600 018.

T.RAJA, J.

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REVIEW APPLICATION
NO.212 of 2013

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