

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2015

CORAM

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN

W.P.No.29569 of 2013

N.Nagarathinam

...Petitioner

vs.

1.The District Educational officer,
Erode.

2.The Principal Accountant General (A & E)
Office of Accountant General, Teynampet,
Chennai -18.

3.The Headmaster,
Government High School,
Kavilipalayam, Sathiyamangalam Taluk,
Erode District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus, calling for the entire records connected with the impugned order passed by the 2nd respondent in Lr.No.Pr.AG(CA)/ISC IV/II/C20-017/10-11/50 dated 30.10.2012 and consequential order of recovery passed by the 3rd respondent vide Na.Ka.No.370/2012 dated 15.07.2012 and quash the same and direct the respondents to refund the recovered amount of Rs.1,40,023/- to the petitioner, recovered from the Gratuity amount of the petitioner.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.M.S.Ramesh,
Spl.Govt.Pleader for R1 and R3
Mr.V.Vijayshankar for R2

ORDER

The petitioner was given incentive increment for acquiring higher qualification. Thereafter, on attaining the age of superannuation, the petitioner retired from service on 31.05.2013.

2. While so, pursuant to the audit objection dated 30.10.2012 raised by the second respondent to the effect that the petitioner was not entitled for incentive increment, the third respondent passed a consequential order dated 15.07.2013 directing recovery of a sum of Rs.1,40,023/- from the retirement benefits of the petitioner. The said order is under challenge in this writ petition, primarily on the ground that no notice was issued before passing such a drastic order of recovery.

3. Heard the learned counsel for the petitioner, the learned Special Government Pleader on behalf of respondents 1 and 3 and the learned Standing Counsel for the second respondent.

4. There is no dispute that before passing the impugned order of recovery, notice was not issued to the petitioner. The petitioner retired from service as early as on 31.05.2013. It was only thereafter, the impugned order of recovery was passed by the third respondent and that too at the instance of the second respondent. Since the impugned order of recovery involves civil consequences to the petitioner, she should have been given prior notice. I am therefore of the view that the order of recovery is liable to be quashed solely on the ground of violation of principles of natural justice.

5. In the result, the order dated 15.07.2012 is set aside and the matter is remitted to the third respondent for fresh consideration. The third respondent is directed to furnish a copy of the audit objection to the petitioner and afford her reasonable time to submit response. The third respondent is further directed to conclude the proceedings as expeditiously as possible and in any case, within a period of two months from the date of receipt of a copy of this order. It is open to the petitioner to produce the documents in support of her contention that she was rightly given the increment.

The writ petition is allowed to the extent indicated above.
No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Educational officer,
Erode.

2.The Principal Accountant General (A & E)
Office of Accountant General, Teynampet,
Chennai -18.

3.The Headmaster,
Government High School,
Kavilipalayam, Sathiyamangalam Taluk,
Erode District.

+ 1 cc to Mr.V. Vijay Shankar, Advocate sR.545

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JSV (CO)

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EU 12.1.19