

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.25023 of 2016
and
WMP.Nos.21442 and 21443 of 2016

C.Panneerselvam

.. Petitioner

Versus

1. Government of Tamil Nadu
Rep. by the Secretary to Government
School Education Department
Fort St. George
Chennai 600 009.
2. The Director of School Education
College Road
Chennai 600 008.
3. The Chief Educational Officer,
Nagapattinam District, Nagapattinam.
4. The Head Master
T.G.N.Municipal Higher Secondary School
Myladuthurai
Nagapattinam District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the fourth respondent in Na.Ka.No.69/2016/A2 dated 06.06.2016 and quash the same and issue a consequential direction to the respondents to grant incentive increment to the petitioner for acquiring B.P.Ed course continuously.

For petitioner : Mr.R.Saseetharan

For Respondents: Mr.A.Kumar

Special Government Pleader

ORDER

By consent, the Writ Petition is taken up and disposed of at the admission stage itself.

2. This Writ Petition has been to quash the order of the third respondent in Na.Ka.No.69/2016/A2 dated 06.06.2016 and for a consequential direction to the respondents to grant incentive increment to the petitioner for having acquired B.P.Ed course.

3. The petitioner was appointed as Physical Education Teacher on 26.12.2001. During the course of his employment, the petitioner passed B.P.Ed., degree during May 2009 for which the third respondent has sanctioned one incentive increment by an order dated 08.02.2010. Thereafter, on the basis of an audit objection, the third respondent passed an order dated 06.06.2016 calling upon the petitioner to repay the alleged excess amount paid to the petitioner.

4. According to the learned counsel for the petitioner, the impugned order has been passed in violation of principles of natural justice. Before seeking to recover the alleged excess pay paid to the petitioner, the third respondent has not issued any notice to the petitioner. When the incentive increment was paid to the petitioner without any fraud or misrepresentation on the part of the petitioner, recovering the amount paid thereof without even issuing a notice is per se illegal. In this context, the learned counsel for the petitioner relied on the decision of the Division Bench of this Court in R. Premakumari vs. State of Tamil Nadu, rep. by its Secretary to Government, Education Department, Chennai and others) 2008 1 MLJ 358.

5. The learned Special Government Pleader appearing for the respondents could not deny the fact that the impugned order has been passed by the third respondent without issuing any notice to the petitioner, purportedly on the basis of an audit objection.

6. I heard the learned counsel for both sides. Admittedly, the third respondent has straight away passed the impugned order seeking to recover the excess amount paid to the petitioner towards incentive increment. Such an order was passed purportedly on the basis of an audit objection. Therefore, as held by the Division Bench of this Court in R. Premakumari vs. State of Tamil Nadu, rep. by its Secretary to Government, Education Department, Chennai and others) 2008 1 MLJ 358, the impugned order of the third respondent cannot be legally sustainable. In the above said judgment, the Division Bench of this Court, following the judgment of the Supreme Court held that even if wrong fixation has been made by the authorities, when recovery of the same is sought to be made, minimum principle of natural justice has to be followed, as such, the employee is entitled for notice before passing the order of recovery. The relevant portion is extracted hereunder:

"9. The second ground of attack by the learned counsel appearing for the appellant is that the finding of the learned Judge found in paragraph 9 is erroneous that even if it is a case of wrong fixation, the employee is entitled for notice and, therefore, this Court must follow the decision of the Supreme Court in Sahib Ram v. State of Haryana 1995 Supp (1) SCC 18. In that decision, it is clearly stated by the Supreme Court that even if wrong fixation has been made by the authorities, when recovery of the same is made, minimum principle of natural justice has to be followed and, therefore, the employee is entitled for notice. We are bound to follow the said binding ratio. Therefore, the order of the learned Judge found in paragraph 9 of the order to that extent is not legal and proper.

10. Under the above circumstances, we hereby direct the second respondent to give a notice to the appellant with reference to the recoveries to be made and justification for the same within a period of four weeks from the date of receipt of a copy of this order and personal hearing may be granted by the second respondent. After hearing the objections of the appellant, the second respondent is directed to pass a speaking order and communicate the same to the appellant. Till decision is taken, the respondents are restrained from making any recovery of any amount from the salary of the appellant."

7. This Court time and again has held that whenever there was an objection raised by the audit team, based on the same, recovery cannot be contemplated straight away without even issuing any notice to the government servant. Such a course of action is mandatory in tune with the principles of natural justice. In the present case, admittedly, the third respondent has straight away passed the impugned order and it is in violation of principles of natural justice. Therefore, the impugned order is set aside and the matter is remitted back to the third respondent for fresh consideration. The third respondent is directed to issue a show cause notice to the petitioner calling upon his explanation and thereafter pass appropriate orders on merits and in accordance with law. It is

made clear that till such time an order is passed by the third respondent, the petitioner is entitled for payment of incentive increment on the basis of the audit objection at the correct rate only. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

arr/rsh
To

1. The Secretary to Government
Government of Tamil Nadu
School Education Department
Fort St. George
Chennai 600 009.
2. The Director of School Education
College Road
Chennai 600 008.
3. The Chief Educational Officer,
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4. The Head Master
T.G.N.Municipal Higher Secondary School
Myladuthurai
Nagapattinam District.

+1cc to the Government Pleader Sr.41511
+1cc to Mr.R.Saseetharan, Advocate Sr.41012

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srg 08/09/2016

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