

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No. 26703 of 2016
and
W.M.P. No. 22922 of 2016

M.Pandurangan ... Petitioner
Versus

- 1.The Joint Director of School Education
D.P.I., College Road
Chennai - 600 006
- 2.The Chief Educational Officer
Cuddalore District
- 3.The Headmaster
Government High School
Palayamkottai - 608 701
Cuddalore District ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records made in the impugned order of the third respondent dated 14.07.2016 and quash the same.

For Petitioner : Mr.R.Sreedharan
For Respondents : Mr.A.Kumar
Special Government Pleader

O R D E R

By consent of the counsel for both sides, the Writ Petition is taken up for disposal at the admission stage itself.

2. The petitioner calls in question the order dated 14.07.2016 of the third respondent in and by which the third respondent, on the basis of the audit objections, has sought to recover a sum of Rs.1,17,966/- paid to the petitioner towards incentive increment for the period from 4/2013 to 6/2014.

3. The case of the petitioner is that he joined as Drawing Master on 14.10.1982 and his service was regularised. During the course of his service, the petitioner obtained Master Degree in Tamil in the year 1998 and also M.Phil Degree in the year 2008. Subsequently, the petitioner was promoted as B.T. Assistant [Tamil] on 30.10.2007. On the basis of the order passed by the Government, for having passed M.Phil.,

Degree, by proceedings dated 28.03.2013 of the third respondent, the petitioner was given one incentive increment. The petitioner was also paid arrears of incentive increment from 28.06.2008. While so, when the petitioner was working as B.T. Assistant, based on the audit objections, the third respondent passed the impugned order dated 14.07.2016 calling upon the petitioner to pay the incentive increment paid to him for the period from 4/2013 to 6//2014 on the ground that it was erroneously paid to him. Challenging the same, the petitioner has come up with this writ petition.

4. Mr. R. Sreedharan, learned counsel for the petitioner would mainly contend that the impugned order has been passed purportedly on the basis of an audit objection. Such an order was passed by the third respondent without even giving any notice to the petitioner or affording an opportunity to him. It is further submitted that the petitioner has pursued M.Phil., Degree only after obtaining permission from the respondents. Therefore, according to the petitioner, the impugned order is in violation of principles of natural justice. In this context, the learned counsel for the petitioner would submit that the Honourable Supreme Court in the decision rendered in (Shyam Babu Verma and others vs. Union of India and others) reported in 1994 2 SCC 521 has held that in the event of recovery of excess amount, notice is required to be given and without notice, the order or recovery passed is illegal. It was further held that if the order of recovery is passed pursuant to a mistake on the part of the employer and not by any misrepresentation of the employee, then the employee is entitled for a notice. The same view was reiterated by the Division Bench of this Court in the case of (K. Premakumari vs. State of Tamil Nadu, rep. by its Secretary to Government, Education Department, Chennai and others) reported in 2008 1 MLJ 361. Therefore, the learned counsel for the petitioner prayed for setting aside the order of the third respondent.

5. Per contra, Mr.A.Kumar, learned Special Government Pleader appearing for the respondents would contend that as per G.O.No.1D dated 18.01.2013 the incentive increment has to be paid to the petitioner for having passed M.Phil-Tamil from the date of issuance of the Government Order and not from 29.06.2008 when permission was granted to the petitioner to pursue the course. Therefore, the petitioner is not eligible for incentive increment from April 2013. The learned Additional Government Pleader therefore would justify the order passed by the third respondent and prayed for dismissal of the writ petition.

6. I heard the learned counsel for both sides and perused the materials placed on record. Admittedly, the third respondent has passed the impugned order, seeking to recover a sum of Rs.1,17,966/- paid to the petitioner towards incentive increment, without even a notice or affording an opportunity to him. On reading of the impugned order, it is clear that no notice was issued to the petitioner before passing the order of recovery. The impugned order was passed by the third

respondent only on the basis of an audit objection. It is also not in dispute that the excess payment was made not due to any misrepresentation on the part of the petitioner. Under those circumstances, the decision cited by the learned counsel for the petitioner reported in (Shyam Babu Verma and others vs. Union of India and others) 1994 2 SCC 521 is applicable to the facts of the case of the petitioner. In that judgment, the Honourable Supreme Court held that for no fault of the petitioners, their scale of pay was reduced in the year 1984, with effect from 01.01.1974. Therefore, it is only just and proper that no recovery of excess payment has to be made without a notice. Even in the decision relied on by the learned counsel for the petitioner reported in (K. Premakumari vs. State of Tamil Nadu, rep. by its Secretary to Government, Education Department, Chennai and others) 2008 1 MLJ 361 the Division Bench of this Court has held that before recovery of the amount, the minimum requirement is a notice to be given to the employees. In the case on hand, admittedly, no notice was issued to the petitioner before passing the order of recovery and therefore, on this ground, the impugned order of the third respondent is set aside. The respondents are directed to issue notice to the petitioner with reference to recovery of incentive increment and after receipt of explanation, if any, from the petitioner, pass speaking order within a period of two months thereafter. The respondents are also directed to give an opportunity of hearing to the petitioner before passing any order and the resultant order be communicated to him. Till a decision is taken, the respondents are restrained from making any recovery of amount from the petitioner.

8. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Joint Director of School Education,
D.P.I., College Road, Chennai - 600 006.

2.The Chief Educational Officer, Cuddalore District.

3.The Headmaster,
Government High School,
Palayamkottai - 608 701. Cuddalore District.

+1 cc to Govt.Pleader,sr.43661.