IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.11.2016
CORAM :
THE HONOURABLE Mr.JUSTICE R.SUBBIAH
W.P.No.8468 of 2016
and
W.M.P.No.7533 of 2016

C.Subramani ... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Vellore.

4.The District Educational Officer,
Thiruppathur, Vellore District.

5.The Headmaster,
Government Hr. Sec. School,
Ponneri, Thirupatthur, Vellore.

6.The Regional Accountant General (Auditing)
or Local Fund Officer (Auditing),
School Education Department,
Coimbatore-641 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call of the records of the 5th respondents relating to proceedings bearing Na.Ka.No. -- / 2016, dated 11.02.2016 and to quash the same.

For Petitioners : Mr.V.Thirupathi

For Respondents : Mr.K.Dhananjayan, Spl GP

* * * * *

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a writ of Certiorari, to call of the records of the 5th respondents relating to proceedings bearing Na.Ka.No. -- / 2016, dated 11.02.2016 and to quash the same.

2.In the affidavit filed in support of the writ petition it has been stated by the petitioner as follows_

2-1.The petitioner joined as Secondary Grade Teacher on 05.12.1979. Thereafter, he was awarded Selection Grade on 05.12.1989 and Special Grade on 05.12.1999. He was allowed to retire from service on 30.09.2007 on attaining the age of superannuation. He had put in 27 years of service in the same post without any promotion.

2-2.It is further stated by the petitioner that the persons appointed as Secondary Grade Teacher in the Elementary Education have got promotional opportunity as Elementary School Headmaster and they are awarded Higher Scale of pay in the Selection Grade/Special Grade Scale of pay applicable to the post of Elementary School Headmaster. Whereas for the Secondary Grade Teachers appointed in High Schools, there is no promotion post for them. Hence, there is a disparity in scale of pay in respect of the similarly situated persons. In order to have uniformity in respect of all secondary grade teachers placed in the primary schools and high schools/Higher Sec. Schools, the Government issued an order in G.O.Ms.No.216, Finance Department, dated 22.03.1993, thereby gave direction to the effect that Secondary Grade Teachers employed under High School were also eligible for the scale of pay on par with the scale of pay of Primary School Head Master with effect from 01.06.1988. According to the petitioner, he is also similarly placed person; but, the above said benefit was not given to the petitioner. Hence, the petitioner had earlier filed a writ petition in W.P.No.26746/2010 and this Court by order dated 29.11.2010 directed the respondents to consider the petitioner's request in the light of G.O.Ms.No.216, dated 22.03.1993. But, thereafter, the request of the petitioner was rejected by the respondents by order dated 14.07.2011. Aggrieved over the same, the petitioner had filed another writ petition in W.P.No.14907/2012 and the same was allowed by this Court on 23.04.2012. Thereafter, the 3rd respondent by his proceedings dated 12.12.2013 extended the benefits of the said G.O.Ms.No.216, dated 22.03.1993, to the petitioner also and paid the arrears of salary and revised pension to the petitioner. Now, the 5th respondent by his proceedings bearing Na.Ka.No.12016, dated 11.02.2016, directed the petitioner to remit a sum of Rs.45,448/- under the head of Government Account towards Income Tax at 10% and Educational

Service Tax at 3% for the payment of arrears amount and unearned leave salary to him. It appears that the 5th respondent has passed the said order dated 11.02.2016, based on the audit objection raised by the 6th respondent by his proceedings dated 31.03.2015. Hence, the petitioner has come forward with the present writ petition.

3.It is the specific submission of the learned counsel for the petitioner that the impugned order has been passed without any notice to the petitioner. Further, the 5th respondent (Headmaster, Govt Hr Sec School, Ponneri) is not a competent authority to direct the petitioner to remit the amount towards Income Tax. Thus, the learned counsel for the petitioner sought for quashing of the impugned order.

4.Per contra, the learned Special Government Pleader appearing for the respondents, by filing a detailed counsel, would contend that pursuant to the order dated 23.04.2012 in W.P.No.14907/2012 passed by this Court, a sum of Rs.4,41,240/- was paid to the petitioner and the said amount was credited in his bank account through ECS by the 5th respondent. While doing so, a sum of Rs.45,448/- was due from the petitioner towards Income Tax. The 6th respondent conducted internal audit for the period from 01.04.2013 to 31.03.2014 in the 5th respondent-School. In the audit report, it was found that the petitioner has to pay Income Tax. Hence, the 5th respondent was instructed to take necessary steps to rectify the audit objections pointed out by the 6th respondent. Based on the audit report, the 5th respondent issued proceedings vide Na.Ka.No.37/2016, 11.02.2016 to the petitioner directing him to remit a sum of Rs.45,448/- towards Income Tax. It is the responsibility of the 5th respondent to deduct Income Tax from the salary/pension of the petitioner. Only based on the instruction of the 6th respondent, the 5th respondent has issued to the impugned order to the petitioner to remit the Income Tax. Under such circumstance, according the learned Special Government Pleader, there is no infirmity in the impugned order passed by the 5th respondent. Thus, he sought for dismissal of the writ petition.

5. I have carefully heard the submissions made on either side and perused the materials available on record.



6.From a perusal of the records, it is seen that pursuant to the order dated 23.04.2012 in W.P.No.14907/2012 passed by this Court, a sum of Rs.4,41,240/- was paid to the petitioner and the said amount was credited in his bank account through ECS by the 5th respondent. Thereafter, the 6th respondent conducted internal audit for the period from 01.04.2013 to 31.03.2014 in the 5th respondent-School. In the audit report, it was found that the Income Tax for the amount paid to the petitioner was not deducted and the petitioner has to pay income tax for the amount, which he received. Hence, the 6th respondent has raised an Audit Objection. In the Audit report, the 5th respondent was instructed to take necessary steps to rectify the audit objections pointed out by the 6th respondent. Only based on the instructions given in the Audit Objection by the 6th respondent, the 5th respondent issued proceedings vide Na.Ka.No.37/2016, 11.02.2016 to the petitioner directing him to remit a sum of Rs.45,448/- towards Income Tax. It is the responsibility of the 5th respondent to deduct Income Tax from the salary/pension of the petitioner. Under such circumstance, the submission of the learned counsel for the petitioner that the 5th respondent is not the competent authority to issue the impugned proceedings, cannot be countenanced. Further more, the petitioner is liable to pay the Income Tax for the amount which he received. It is the statutory tax and the petitioner is duty bound to pay the Tax. Under such circumstance, I do not find any significance in the submission made by the learned counsel for the petitioner that no notice was issued to the petitioner before passing the impugned order. I do not find any merit in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssv

To
1.The Secretary,
State of Tamil Nadu
School Education Department,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Vellore.

4.The District Educational Officer,
Thiruppathur,
Vellore District.

5.The Headmaster,
Government Hr. Sec. School,
Ponneri, Thirupatthur,
Vellore.

6.The Regional Accountant General (Auditing)
or Local Fund Officer (Auditing),
School Education Department,
Coimbatore-641 001.

+1 cc to Mr.V.Thirupathi Advocate sr 66194
+1 cc to Government Pleader sr 65876

W.P.No.8468 of 2016
and
W.M.P.No.7533 of 2016

aa22/12/2016