

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.21418 of 2011
and
M.P.No.2 of 2011

S.Sakthivel

.. Petitioner

Vs.

1.The Director of Elementary Education,
College Road,
Chennai - 600 006.

2.The District Elementary Education Officer,
Erode, Erode District.

3.The Assistant Elementary Education Officer,
Sathiamangalam, Erode District.

.. Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for records made in the impugned order made by the third respondent in Na.Ka.No.1541/2011/A1, dated 9.6.2011 and the consequential order of the second respondent in O.Mu.No.3001/A4/2011, dated 29.7.2011 and quash the same.

For Petitioner : Mr.S.N.Ravichandran

For Respondents: Mrs.M.E.Raniselvam
Addl. Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking issuance of a writ of certiorari to call for records made in the impugned order made by the third respondent in Na.Ka.No.1541/2011/A1, dated 9.6.2011 and the consequential order of the second respondent in O.Mu.No.3001/A4/2011, dated 29.7.2011 and quash the same.

2. Succinctly put, the facts are as under: According to the petitioner, he was appointed as Secondary Grade Teacher in P.U.Primary School, Rampayalur, Sathiyamangalam Union vide order dated 8.9.1987 and after obtaining prior permission, he had pursued B.Lit. (Tamil) and was thereafter promoted as Tamil Pandit by an order dated 21.12.1997 and posted at P.U.Middle School, Makinakombai. Later, the petitioner was promoted as Middle School Headmaster by an order dated 27.5.2000 of the second respondent and was posted at P.U. Middle School, Pasuvanapuram.

3. It is stated that while in service, with prior permission of the department, the petitioner pursued M.A.(Tamil) and passed the same in the year 2006 and thereafter passed B.Ed. Regular course in the year 2009. For acquiring such higher qualification of M.A. And B.Ed., the third respondent sanctioned incentive increment vide order dated 23.12.2009.

4. It is averred that when things stood thus, the third respondent passed the impugned order of recovery, directing the petitioner to refund one incentive increment sanctioned for B.Ed. Qualification. The petitioner appealed to the second respondent on 9.7.2011. However, the second respondent rejected the appeal and directed the third respondent to recover one incentive increment sanctioned wrongly by the third respondent for B.Ed. Qualification. As a sequel to the above, the third respondent vide order dated 22.8.2011 refixed the scale of pay reducing basic pay from Rs.24,920/- to Rs.23,640/- and ordered recovery of Rs.41,065/-.

5. Assailing the orders passed by the second and third respondents, the present writ petition is filed.

6. The learned counsel appearing for the petitioner vehemently contended that the incentive increment was granted by the respondents on the basis of existing regulations and not on misrepresentation by the petitioner and, therefore, the petitioner should not put to sufferance, that too without following the bare bones of the principles of natural justice.

7. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents reiterated the reasons that weighed with the respondent authorities in passing the impugned orders and prayed for dismissal of the writ petition.

8. I heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents and perused the records.

9. At the outset, it is to be noted that at the time of admission of this writ petition, i.e., on 19.9.2011, an order of interim stay of the orders impugned in this writ petition was granted and the same holds water even as on date. The respondents have not taken any steps to vacate the same. Unfortunately, no counter affidavit had been filed till date.

10. It is not the contention of the learned Additional Government Pleader that the petitioner had been granted incentive increments based on his misrepresentation.

11. In the case on hand, a bare perusal of the impugned orders shows that before re-fixing the pay of the petitioner or ordering recovery, no opportunity of hearing was given to the petitioner. The learned Additional Government Pleader also did not place any material to show that the impugned orders were passed after affording an opportunity of hearing to the petitioner.

12. It is trite that an order prejudicial to the interest of the party could be passed only after putting the person concerned on notice in compliance of principles of natural justice. In this case, the petitioner has specifically raised the ground that no notice was given to him before passing the impugned orders and no opportunity to show cause was given by the respondents before cancelling the incentive increment and ordering recovery. When the petitioner had raised such specific ground, it is for the respondents to refute the same and justify that notice has been given to the petitioner. But, nothing so has been done by the respondents. Therefore, this Court has no hesitation to hold that there is a clear violation of principles of natural justice in this case. On this score alone, without expressing any opinion on the merits of the claim of the petitioner, this Court is inclined to allow the writ petition.

13. In the result, the writ petition is allowed by setting aside the impugned order passed by the third respondent in Na.Ka.No.1541/2011/A1, dated 09.06.2011 and the consequential order of the second respondent in O.Mu.No.3001/A4/2011, dated 29.07.2011. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Director of Elementary Education,
College Road,
Chennai - 600 006.
- 2.The District Elementary Education Officer,
Erode, Erode District.
- 3.The Assistant Elementary Education Officer,
Sathiamangalam, Erode District.

+lcc to Mr.S.N.Ravichandran, Advocate Sr.55835
+lcc to the Government Pleader Sr.56258

W.P.No.21418 of 2011 and
M.P.No.2 of 2011

srg 5/10/2018



WEB COPY