

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.28118 of 2011

N.Karthikeyan

... Petitioner

Vs

- 1.State,
rep. by Secretary to Government,
Education Department,
Secretariat, Chennai-600 009.
 - 2.The Director of Elementary Education,
D.P.I. Campus,
Chennai-600 006.
 - 3.The District Elementary Educational Officer,
Cuddalore.
 - 4.The Additional Assistant Educational Officer,
Bhuvanagiri, Cuddalore.
 - 5.The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai-600 018.
- Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus callin for the records from the fourth respondent by his proceedings No.Na.Ka.No.1035/A1/2009, dated 5.4.1011 and quash the same and direct the 5th respondent to pay arrears of salary benefits as Headmaster for the period of 2.6.1976 to 8.7.1977 as per G.O.Ms.No.202, dated 24.9.2008 Department of Education (G2).

For Petitioner : Mr.T.R.Sundaram

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 to 4

Mr.V.Vijay Shankar
for 5th respondent

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records of the fourth respondent in Na.Ka.No.1035/A1/2009, dated 5.4.2011 and pay arrears of salary benefit as Headmaster for the period of 2.6.1976 to 8.7.1977 as per G.O.Ms.No.202,dated 24.9.2008.

2. I heard Mr.T.R.Sundaram, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 4 and Mr.V.Vijay Shankar, learned counsel for the 5th respondent and also perused the materials available on record.

3. The petitioner was appointed as Higher Grade Teacher in the Secondary Grade qualification and posted at Panchayat Union Middle School, Bhuvanagiri Panchayat Union, Cuddalore District on 1.1.1971 and subsequently, he was promoted as Headmaster on 2.6.1976 and had worked as such upto 7.7.1977. Thereafter, by the proceedings of the Commissioner of Panchayat Union, dated 8.7.1977, the petitioner was reverted as Assistant Teacher and had worked as Assistant Teacher upto 4.7.1977 and was paid salary as equal to the post of the Headmaster. Later on 4.7.1977, the petitioner was appointed and posted as Headmaster at Bhuvanagiri and had worked upto 31.8.2006 and after seeing his performance, the second respondent extended his service from 1.9.2006 to 31.5.2007 and retired from service on 31.5.2007. After retirement, the petitioner was receiving retirement benefits from the fifth respondent.

4. The case of the petitioner is that the Government issued G.O.Ms.No.202, dated 24.9.2008 stating that persons who have been appointed as Headmaster before 1.6.1988 and subsequently, reverted as Assistant Teachers, thereafter promoted as Headmasters were eligible for getting all benefits with regard to their reversion period by treating them as Headmasters during that period. According to the petitioner, since the petitioner was appointed as Headmaster on 2.6.1976 and worked upto 7.7.1977, G.O.Ms.No.202 was applicable to him. While so, by the impugned order, the fourth respondent denied his service approval for getting the monetary benefits and also issued orders directing the petitioner to deposit the amount which was paid to him as Headmaster for the period from 1.1.1991 to 30.8.2006. According to the petitioner, for the said period, the amount was not disbursed.

5. The learned Special Government Pleader submitted that the fourth respondent, who was competent to sanction pension benefits to the petitioner is competent to cancel the orders and issued impugned order for the recovery of the excess paid

retirement benefits such as encashment leave and gratuity arrears etc.

6. As far as recovery ordered by the fourth respondent in the impugned order is concerned, it is seen from the records that the petitioner had not been heard before passing the impugned order and on this short ground, the writ petition is liable to be allowed qua order of recovery.

7. The Hon'ble Supreme Court, in a decision in Sahib Ram vs. State of Haryana & others, reported in 1995 Supp. (1) SCC 18, has held as under:

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.

8. Reduction of pay and recovery of pay and/or refixation of pensionary benefits, if any, without hearing the petitioners is illegal. In W.P.No.31727 of 2006, dated 05.11.2007 (N.Kannabiran v. Accountant General Officer and another), the learned Single Judge of this Court has referred to the decision of the Hon'ble Supreme Court in Shyam Babu Verma v. Union of India, reported in (1994) 2 SCC 521 and held that the petitioner cannot be held to be responsible for the fault of the respondents and no recovery be made.

9. In the Shyam Babu Verma v. Union of India, supra, the Hon'ble Supreme Court held as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that the scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount

paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

10. In Rajasthan State Road Transport Corporation and another Vs. Bal Mukund Bairwa (2), reported in (2009) 4 SCC 299, the Hon'ble Supreme Court observed as under:

"35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity."

11. The aforesaid decisions are squarely applicable to the case on hand. Thus, this Court as well as Hon'ble Supreme Court in a catena of decisions, time and again reiterates that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice. Therefore, the impugned order of the fourth respondent qua recovery of excess payment said to have been made to the petitioner cannot be sustained.

12. As far as applicability of G.O.Ms.No.202 to the case of the petitioner is concerned, it was submitted by the learned counsel for the petitioner that since the petitioner was appointed as Headmaster on 2.6.1976 and had worked upto 7.7.1977, G.O.Ms.No.202 was applicable to him for getting all monetary benefits.

13. On the other hand, it is the say of the fourth respondent that G.O.Ms.No.202 issued to the benefit of block transferred teacher and not to those like the petitioner who was all along worked in the same block. Therefore, the prayer of the petitioner to sanction benefits as per G.O.Ms.No.202 is against the spirit of the orders.

14. As per G.O.Ms.No.202, any teacher who worked as Headmaster prior to 1.6.1988 and thereafter transferred and employed as Secondary Grade Teacher is eligible to the benefits of V Pay Commission for fixing the scale of pay.

15. In this case, admittedly, the petitioner was appointed as Higher Grade Teacher in the Secondary Grade qualification at Panchayat Union Middle School, Bhuvanagiri Panchayat Union on 1.1.1971 and subsequently, promoted as Headmaster on 2.6.1976 and he had worked as such upto 7.7.1977 and thereafter, the petitioner was reverted as Assistant Teacher on 8.7.1977 and was worked as Assistant Teacher upto 4.7.1997. Subsequently, the petitioner was promoted as Headmaster and worked at Bhuvanagiri and retired from service on 31.5.2007. Since it is made clear in paragraph 4 of G.O.Ms.No.202 that the said G.O. is applicable

to all persons irrespective of the fact, whether they approached the Tribunal or not, I am of the view that the petitioner is entitled to invoke the benefits of G.O.Ms.No.202, dated 24.9.2008.

16. In my considered view, the orders passed by the Madurai Bench of Madras High Court in W.P.No.10397 of 2009, dated 9.3.2010 and the orders passed by this Court in a batch of writ petitions in W.P.No.28902 of 2010 etc. batch squarely cover the cases of this petitioner as well. There is no controversy before this Court that the petitioner worked as Headmaster, which was then kept on par with the Secondary Grade Teacher. The post of Primary School Headmaster is kept in high pedestal in the matter of scale of pay only by the implementation of V Pay Commission on 1.6.1988. It is only by having taken note of this fact, the Tribunal as well as this Court have directed that for not fault of those teachers, who were transferred from the post of Primary School Headmaster to the post of Secondary Grade Teachers, they should not be allowed to suffer monetary loss. It was, in those cases, the Government also, issued G.O.Ms.No.202, dated 24.9.2008.

17. For the foregoing reasons, this Court is of the view that the petitioner is entitled for the benefit of G.O.Ms.No.202, dated 24.9.2008 and the contrary order which is impugned in this writ petition is liable to be quashed.

18. In the result,

(a) this writ petition is allowed by setting aside the proceedings No.Na.Ka.No.1035/A1/2009, dated 5.4.2011, passed by the 4th respondent.

(b) the 5th respondent is hereby directed to pay the arrears of salary benefits to the petitioner in the post as Headmaster for the period from 2.6.1976 to 8.7.1977 as per G.O.Ms.No.202, dated 24.9.2008.

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,

Education Department, Secretariat, Chennai-600 009.

2.The Director of Elementary Education,
D.P.I. Campus,
Chennai-600 006.

3.The District Elementary Educational Officer,
Cuddalore.

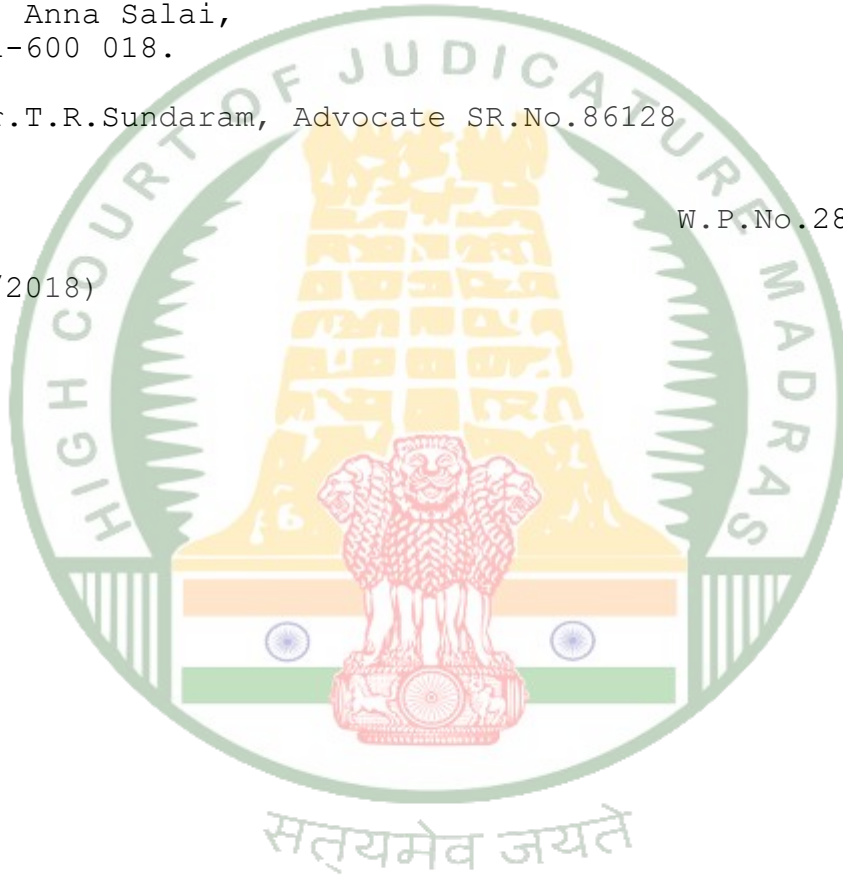
4.The Additional Assistant Educational Officer,
Bhuvanagiri,
Cuddalore.

5.The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai-600 018.

+1cc to Mr.T.R.Sundaram, Advocate SR.No.86128

W.P.No.28118 of 2011

GMV (08/10/2018)



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