

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.9863 of 2010

R.Ramesh

... Petitioner

Vs

The Assistant Elementary Educational Officer,
K.V. Kuppam Range,
Vellore District

... Respondent

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for the records of the respondent in his proceedings Na.Ka.No.612/A1/2010 dated 19.4.2010 and quash the same.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorari calling for the records of the respondent in proceedings Na.Ka.No.612/A1/2010, dated 19.4.2010.

2. The grievance of the petitioner is that he was appointed as Secondary Grade Teacher on 13.10.1997 in the Panchayat Union Elementary School, Oorgoundanoor village, Polur Taluk and was promoted as Headmaster on 26.9.1998 and posted to the Panchayat Union Elementary School, Kuttauthur. Since the petitioner did not join in the promotional post, by an order dated 22.1.2000, he was transferred to K.V. Kuppam Union and posted as Secondary Grade Teacher at the Kukkalupalli Panchayat Union School. Thereafter, the petitioner was transferred and posted to Arumbakkam Panchayat Union Primary School, K.V.Kuppam Union.

3. According to the petitioner, in terms of G.O.Ms.No.202, School Education (J2) Department, dated 24.9.2008, his salary was refixed in the pay scale of Secondary Grade Headmaster and in fact, he is entitled to the benefit of G.O.Ms.No.202. While so, by the impugned order, without giving an opportunity to the

petitioner, the respondent unilaterally refixed the salary and directed refund of the excess payment made to him. Since the impugned order has been passed without giving an opportunity of hearing, the petitioner prayed for setting aside the same.

4. According to the respondent, since the petitioner has failed to join in the promotional post of Headmaster, he is not entitled to the benefit of G.O.Ms.No.202. On noticing the same by the audit department, the respondent has issued the impugned order revising the pay of the petitioner and ordered recovery of the excess paid to him. According to the respondent, there is no illegality in the impugned order of the respondent.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

6. 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.

7. The Hon'ble Supreme Court, in a decision in Sahib Ram vs. State of Haryana & and 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, if any, without hearing the petitioner 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.

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 apply 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.

12. No prejudice need be proved by enforcing the fundamental rights. Violation of fundamental right itself renders the impugned action void. So also the violation of natural justice renders the act of nullity. The purpose of the principles of natural justice is prevention of miscarriage of justice.

13. In a decision in Divisional Superintendent, Eastern Railway, Dinapur and others vs. L. N. Kashri and others, reported in A.I.R. 1974 SC 1889, the Hon'ble Supreme Court held thus:

"The appellants, having fixed the scale and confirmed the respondents, could not reduce the scale without giving any opportunity to the respondents to be heard. Further more, the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board."

The said decision is applicable in all force to the case on hand.

14. It is pertinent to point out that in the case on hand, nothing has been produced by the respondent to show that benefit

of G.O.Ms.No.202 was extended to the petitioner based on his representation. The respondent, having fixed the scale of pay, could not reduce the scale without giving any opportunity to the petitioner. Further, reduction of pay and recovery of pay, if any, without hearing the petitioner are illegal.

15. As stated supra, nothing has been produced to show that on the misrepresentation of the petitioner, the benefit of higher pay scale was given to him. But in the case on hand, by wrong construction made by the principal, for which the petitioner cannot be held to be at fault. Under the circumstances, there is no justification in passing the impugned order and the same is liable to be set aside.

16. In the result, this writ petition is allowed by setting aside the proceedings Na.Ka.No.612/A1/2010 dated 19.4.2010 passed by the respondent. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Assistant Elementary Educational Officer,
K.V. Kupam Range,
Vellore District

+lcc to Mr.G.Jeremiah, Advocate, S.R.No.86749

W.P.No.9863 of 2010

CS/09/10/2018

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