

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.09.2017
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.7343 of 2013 and
M.P.No.1 of 2013

K.Balasubramanian

... Petitioner

Vs

1.The Accountant General (Audit),
Teynampet,
Chennai - 600 018.

2.The Addl. Assistant Elementary
Educational Officer,
Kollidam Union,
Nagapattinam District.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records relating to the letter passed by the second respondent dated 20.09.2012 in Na.Ka.No.551/A1/2012, and quash the same, thereby forbearing the respondents from implementing the above letter dated 20.09.2012.

For Petitioner : Mr.R.Sreedharan

For Respondents : Mr.Vijaya Shankar (for R1)

Mr.R.Govindasamy (for R2)
Special Government Pleader

O R D E R
सत्यमेव जयते

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the letter of the second respondent dated 20.09.2012 in Na.Ka.No.551/A1/2012, to quash the same and consequently, forbear the respondents from implementing the above said letter dated 20.09.2012.

2. I heard Mr.R.Sreedharan, learned counsel for the petitioner; Mr.Vijaya Shankar, learned counsel appearing for the first respondent and Mr.R.Govindasamy, learned Special Government Pleader appearing for the second respondent and also materials available on record.

3. The petitioner, who was serving as a middle school B.T. Headmaster, retired from service 30.06.2009. He is now aged 67 years.

4. By the impugned letter dated 20.09.2012, the second respondent has ordered recovery of a sum of Rs.5,83,000/- on the alleged ground of excess payment and wrong fixation. This letter is challenged in this writ petition.

5. It is seen from the records that the petitioner had not been heard before passing the impugned letter and/or proceedings and on this short ground, the writ petition is liable to be allowed.

6. 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.

7. The learned counsel appearing for the petitioner has also brought to the notice of this Court that the Department has not issued notice or given opportunity before ordering recovery, but proceeded merely on the basis of the report of the Audit team. According to him, reduction of pay and recovery of pay without hearing the petitioner is illegal. In support of the said argument, the learned counsel relied on the decision of the learned Single Judge of this Court in W.P.No.31727 of 2006, dated 05.11.2007 (N.Kannabiran v. Accountant General Officer and another), wherein the learned Single Judge of this Court has referred the decision of the Hon'ble Supreme Court in Shyam Babu Verma v. Union of India, reported in (1994) 2 SCC 521.

8. 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."

9. Applying the aforesaid decision of the Hon'ble Supreme Court, the learned Single Judge of this Court in N.Kannabiran v. Accountant General Officer and another, supra, held as under:

"8. In the light of the above, the writ petition will stand allowed. The impugned order will stand quashed. However, there will be no order as to costs. Connected Miscellaneous petitions are closed."

The aforesaid decisions of the Hon'ble Supreme Court and the learned Single Judge of this Court are squarely applicable to the case on hand.

10. It is pertinent to point out that in the case on hand the respondent authorities, having fixed the scale and confirmed the petitioner, could not reduce the scale without giving any opportunity to the petitioner. Further, reduction of pay and recovery of pay without hearing the petitioner is illegal.

11. 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, the amount is sought to be recovered. Under the circumstances, the amount paid to the petitioner, as claimed in the impugned letter, should not be recovered from the petitioner.

12. 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."

13. The said decision is applicable in all fours to the case on hand. No steps should be taken to recover or adjust any excess amount paid to the petitioner due to the fault of the respondent authorities, the petitioner being in no way responsible for the same.

14. In the light of the above, the writ petition is allowed and the impugned letter in Na.Ka.No.551/A1/2012, dated 20.09.2012 of the second respondent stands quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Accountant General (Audit),
Teynampet,
Chennai - 600 018.

2.The Addl. Assistant Elementary
Educational Officer,
Kollidam Union,
Nagapattinam District.

+1cc to Mr.R.Shreedharan, Advocate, S.R.No. 63748

+1cc to the Government Pleader, S.R.No.64139.

W.P.No.7343 of 2013
and

M.P.No.1 of 2013

rrs 12/09/2018.

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