

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.20951 of 2007

and

M.P.Nos.1 and 2 of 2007

C.Selvaraj ... Petitioner

Vs.

- 1.The Government of Tamil nadu
Represented by the Secretary to the Government
Adhi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai - 9.
- 2.The Director of Adhi Dravidar and Tribal Welfare,
Chepauk, Chennai - 5.
- 3.The District Adhi Dravidar and Tribal Welfare Officer,
Cuddalore District, Cuddalore.
- 4.The Accountant General,
Teynampet, Chennai - 18.
- 5.The Special Tahsildar,
Adi Dravidar Welfare,
Chidambaram, Cuddalore District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd and 4th respondent issued in Na.Ka.No.W.7/73438/2000 dt.12.4.2001 by the 3rd respondent and in No.AG(A&E)/PENPO9/1/S128-820/RTD/2004-2005/5830 dated 24.09.2004 and No.AG(A&E)/PENPO9/1/S128-820/RTD/2004-2005/ 5824 dated 24.9.2004 and quash the same and issue a consequential direction to the respondents to release the amount of Rs.2,72,417/- with interest at 18% per annum and issue a consequential direction to the respondents to restore the pay of the petitioner at Rs.1760/- with effect from 1.6.88 and fix the petitioner's pay at Rs.8275/- in the scale of pay of Rs.8000-13500 with effect from 1.1.96 and fix the pension and to pay the arrears of pension.

For Petitioner	: Mr.R.Saseetharan
For RR 1 to 3 & 5	: Mr.S.Gunasekaran
	Additional Government Pleader
For RR 4	: Mr.T.Ravikumar

ORDER

The petitioner has approached this Court for seeking the following reliefs:

"To issue a writ of certiorarified mandamus to call for the records of the 3rd and 4th respondent issued in Na.Ka.No. W.7/73438/2000 dt.12.4. 2001 by the 3rd respondent and in No. AG(A&E)/PENPO9/1/S128-820/RTD/ 2004-2005/5830 dated 24.09.2004 and No.AG(A&E)/PENPO9/1/S128-820/ RTD/2004-2005/5824 dated 24.9.2004 and quash the same and issue a consequential direction to the respondents to release the amount of Rs.2,72,417/- with interest at 18% per annum and issue a consequential direction to the respondents to restore the pay of the petitioner at Rs.1760/- with effect from 1.6.88 and fix the petitioner's pay at Rs.8275/- in the scale of pay of Rs.8000-13500 with effect from 1.1.96 and fix the pension and to pay the arrears of pension."

2. According to the petitioner, he employed in the department of Adi Dravidar and Tribal Welfare as Secondary Grade Teacher on 09.09.1970 and was posted at Adi Dravidar Welfare School, Kannadi, Cuddalore Taluk and District. He was thereafter posted as Headmaster at Adi Dravidar Welfare Elementary School at Parankipettai on 05.07.1979 and he worked as Headmaster upto 22.05.1983. Thereafter, he was transferred as Secondary Grade Teacher on 23.05.1983. During that time, the post of Secondary Grade Teacher and Primary School Headmaster was interchangeable, since both the posts carried the same scale of pay. After the recommendations of the V State Pay Commission, the situation had undergone a change wherein, the post of Primary School Headmaster carried higher scale of pay vide G.O.Ms.No.666 dated 27.06.1989. The pay awarded to the post of Primary School Headmaster after the V Pay Commission was Rs.1400-2600 as against the pay scale of Secondary Grade Teacher at Rs.1200-2040. After 01.06.1988, when the revised pay was introduced, the post of Primary School Headmaster became a promotional post to Secondary Grade Teacher.

3. According to the petitioner, in terms of the Tamil Nadu State and Subordinate Service Rules, all promotions to the post of Primary School Headmaster had to be effected on the basis of seniority in the post of Secondary Grade Teacher, but the Administration did not follow the seniority and allowed the Primary School Headmasters who were functioning as such on 01.06.1988 to continue on the basis of fortuitous circumstances, meaning that persons who incidentally functioning in the post of Headmasters on 01.06.1988 were allowed to continue regardless of their seniority in the post of Secondary Grade Teacher.

4. While matter stood thus, the Government passed G.O.Ms.No.1381 dated 05.10.1990 providing for counting the service rendered as Secondary Grade Teacher as well as Primary School Headmaster for the purpose of pay fixation in selection and special grade scale of pay in the post of Primary School Headmaster. The said benefit had been conferred only on the Primary School Headmaster, who had been functioning as such as on 01.06.1988 and the said benefit had not been given to the persons who are promoted subsequent to 01.06.1988. This had created an anomaly in the matter of different pay scale fixed to the same set of employees. Many of the senior Secondary Grade Teachers, who were not working as Primary School Headmaster as on 01.06.1988, had been deprived of the benefit of higher fixation of pay and those who were not seniors but by virtue of fortuitous circumstances, working as Headmasters of Primary School on 01.06.1988 had the benefit of higher pay fixation.

5. In order to rectify the pay anomaly, number of representations were submitted by several Secondary Grade Teachers. In response to the representations, finally the District Adi Dravidar and Tribal Welfare Officer, Cuddalore District, by his proceedings dated 10.09.1997, has stepped up the pay of the petitioner to the level of his junior with effect from 01.06.1988 and fixed the pay accordingly. Thereafter, the petitioner's pay was regulated in terms of stepping-up of pay on par with his juniors.

6. Subsequently, by proceedings dated 12.04.2001, the petitioner was informed that his pay was wrongly fixed and therefore, he was directed to refund Rs.1,11,845/- which was the alleged excess payment made to him by wrong fixation of pay. According to the petitioner, the above proceedings were passed on the basis of audit objections. In the meanwhile, the petitioner had retired from service on attaining the age of superannuation on 31.10.2003. On the basis of the audit objections, an alleged excess payment was recovered from the amount payable to the petitioner towards his retirement benefits.

7. While matter stood thus, the then Tamil Nadu Administrative Tribunal had quashed G.O.Ms.No.1381 dated 05.10.1990, while disposing of certain original applications.

However, subsequently, the Government restored the above said G.O.Ms.No.1381 dated 05.10.1990, through G.O.Ms.No.160 dated 23.08.2005. According to the petitioner, the subsequent G.O. was passed in G.O.Ms.No.255 dated 07.11.2006 refunding the recovery amount to the Teachers who were affected by recovery of excess amount. This was done in terms of the certain orders passed by this Court in W.P.No.7968 of 2006 and W.P.No.10223 of 2003. According to him, the orders passed by this Court are also directly applicable to him.

8. According to the petitioner, in view of the subsequent development, he is also entitled to the restoration of stepping-up of pay as granted, by proceedings dated 10.09.1997, with all other attendant benefits including the refund of amount recovered.

9. During the course of argument, Mr.R.Saseetharan, learned counsel appearing for the petitioner would draw the attention of this Court to the order passed in W.P.No.13385 of 2009 dated 22.01.2010. The learned Judge of this Court has dealt with identical claim and allowed the writ petition. The operative portion of the order passed by the learned Judge as found in paragraph Nos.11 to 15 and the same are reproduced hereunder:

11. It is not in dispute that in the instant case, the petitioner has not misrepresented or committed any fraud for the purpose of securing the higher pay scale, which was accorded to him with effect from on 01.07.1988. In fact, this higher pay scale was made pursuant to orders of the District Revenue Officer (Adi Dravidar and Tribal Welfare) dated 09.01.1990 and the basis of such order is stated to be the direction given by the second respondent on 12.07.1989. In the said direction, it has been specifically stated that under the Adi Dravidar Tribal Welfare Subordinate Service Rules, all the posts are interchangeable and after the implementation of the 5th pay commission, recommendations anomaly would arise by which Juniors were drawing more pay than seniors. In the instant case such anomaly had occurred and the District Revenue Officer (Adi Dravida & Tribal Welfare) Cuddalore, after carefully considering the issue has effected the pay fixation by order dated 09.01.1990, and the said order came to be implemented and the petitioner continued to enjoy the benefit of the higher pay scale with effect on 01.07.1988. This is sought to be denied to him after a period of 11 years from the date of re-fixation and recovery is sought to be effected. By virtue

of the earlier proceeding before the Tribunal, the order of recovery was quashed and liberty was granted to pass fresh orders. Though fresh orders were passed on 24.11.2001, the same was not given effect to till 2005 and only on 02.05.2005, the 4th respondent had re-fixed the petitioner's pay in the lower scale. But this was not given effect to and the petitioner attained superannuation on 30.06.2005. Thereafter, action was sought to be initiated to implement the order dated 24.12.2001 and steps were taken to recover the said amount from the petitioner's retirement benefits. This order was also quashed by this Court in the earlier writ petitions on the ground that it was in violation of the principles of natural justice.

12. Having considered the submission the learned counsel for the petitioner, it is clear that prior to 01.06.1988, the posts of Secondary Grade Teacher the Primary School Headmaster were treated as one and the same and no seniority was maintained for the post of Primary School Headmaster and such seniority came to be fixed for the first time during 1989. If that be the case, the second respondent was justified in issuing the proceedings dated 12.07.1989 for the purpose of stepping up of pay of seniors on par with Juniors and such refixation is also in accordance with FR 27(2) when the petitioner having been granted such benefit of higher pay that is, by stepping up of pay on par with Juniors with effect from 01.07.1988 the same cannot be denied after a lapse of nearly 11 years on the ground of audit objections.

13. The Hon'ble Supreme Court in the judgment reported in (2006) 1 M.L.J. 143 (D. Palavesamuthu Vs. Tamil Nadu Administrative Tribunal, represented by its Registrar, Chennai and others) in a case of recovery arising from the respondent department held as hereunder:—

Para 6 Even if it is accepted for the argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers , for which the petitioner should not be penalised after a lapse of number of years that too after

retirement of the petitioner.

14. In the case referred to supra, it has been held that in the absence of any misrepresentation by an employee, the department would not be justified in effecting recovery from the monetary benefits already disbursed. The case on hand is also one such case where it is not the case of the department that the petitioner had misrepresented and obtained higher scale of pay. It is a case where respondents 2 and 3 had committed mistake in fixing higher pay scale. But the facts, disclose that respondents 2 and 3 were in fact justified in issuing an order dated 12.07.1989 and 09.01.1990 fixing the higher pay scale since the anomaly had occurred and juniors of the petitioner were drawing higher pay. Therefore, these orders are also in due compliance of the provisions of Fundamental Rule 27 (2) and I am fully convinced that the impugned orders of recovery of respondents 1 and 2 insisting upon the petitioner to furnish an undertaking are untenable.

15. Hence, for the reasons stated above the petitioner is entitled to succeed and the writ petition is allowed as prayed for. The impugned orders are set aside and there shall be a direction to the respondents to restore the petitioner's pay at Rs.1700/- in the scale of pay of Rs.1640 - 2900 with effect from 24.01.1990 and fix the petitioner's last drawn pay as Rs.10,475/- and consequently fix the pension and release all terminal benefits including arrears within a period of three months from the date receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

10. Following the order passed by the learned Judge, another order was passed on 29.01.2013 by a learned Judge in W.P. No.11970 of 2009. The learned counsel would submit that the issue raised in the present writ petition is squarely covered by the above decisions and also the fact that the stepping-up of a pay which was originally granted to the petitioner was valid in law and subsequent withdrawal of the said benefit cannot be a valid action on the part of the respondents, considering the facts and circumstances of the case.

11. Upon notice, Mr.S.Gunasekaran, learned Additional

Government Pleader has entered appearance on behalf of the respondents 1 to 3 and 5. Mr.T.Ravikumar, learned standing counsel has entered appearance for the 4th respondent and filed their counter affidavits.

12.The only ground on which the relief sought to be resisted by the respondents is that the petitioner was not working as Headmaster of Primary School on crucial date i.e. on 01.06.1988. The above submissions on the part of the respondents has to be rejected outrightly for the simple reason that the crucial cut of date is 01.06.1988 for the purpose of fixing higher pay scale for the same set of employees is extremely arbitrary, unreasonable and cannot stand the test of constitutional scrutiny under Article 14 and 16 of the Constitution of India. The posting of Headmaster in the Primary School was on the basis of fortuitous circumstances, as admittedly during the relevant time, the post of Secondary Grade Teacher and the Headmaster of Primary School was interchangeable and carried the same basic pay. The said situation has drastically changed only after implementation of the V State Pay Commission with effect from 01.06.1988 wherein the post of Primary School Headmaster was conferred with the higher pay scale and became a promotional post for the post of Secondary Grade Teacher.

13.As rightly contended by the learned counsel for the petitioner that the Administration did not follow the seniority in the post of Secondary Grade Teacher as on 01.06.1988 while Secondary Grade Teacher was posted to act as Headmaster of Primary School and such posting was not objected to by the senior Secondary Grade Teacher for the simple reason that the posts were interchangeable and carried the same pay scale. However, as the situation changed with effect from 01.06.1988, the posting to act as Headmaster of Primary School, did create a hurt burn among the senior Secondary Grade Teachers, since they could not be posted to act as Headmaster of Primary School, though being seniors, for want of vacancies. Therefore, their case for equal pay as that of Headmasters of Primary Schools, who were acting as such with effect from 01.06.1988, cannot be denied under any circumstances and the same would be clearly discriminatory and violative of Article 14 of the Constitution of India.

14.Moreover, it has to be seen that the petitioner although acted as Headmaster for some time prior to 01.06.1988 was denied the higher pay scale, while the same was given to some of his juniors, who by virtue of being in the post of Primary School Headmaster on the crucial date on 01.06.1988. The anomaly and disparity of the pay scale is quite apparent much on the face of it and such anomaly was recognised and addressed by the authorities and therefore, the petitioner was rightly granted stepping-up of pay on par with his juniors originally. In such view of the matter, this Court does not find any valid justification for reversing the order of

stepping up of pay and for recovery of the amount on the basis of so-called excess payment made to the petitioner.

15. In view of the above narrated facts, this Court has no hesitation to allow the writ petition as the petitioner has made out a clear case for grant of relief in his favour. Accordingly, the Writ Petition stands allowed. The impugned orders in Na.Ka.No. W.7/ 73438/2000 dated 12.4.2001 by the 3rd respondent and in No. AG(A&E)/PENPO9/1/S128-820/RTD/2004-2005/5830 dated 24.09. 2004 and No.AG(A&E)/PENPO9/1/S128-820/RTD/2004 - 2005/ 5824 dated 24.9.2004 by the 4th respondent are set aside. There shall be a consequential direction to the respondents to restore the pay of the petitioner to the original status and his pension has to be calculated on the basis. The petitioner is entitled to arrears of such recalculation. The respondents are also directed to refund the amount recovered from the petitioner's retirement benefits. The above directions shall be complied with by the respondents within a period of ten weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Government of Tamil nadu
Represented by the Secretary to the Government
Adhi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai - 9.
2. The Director of Adhi Dravidar and Tribal Welfare,
Chepauk, Chennai - 5.
3. The District Adhi Dravidar and Tribal Welfare Officer,
Cuddalore District, Cuddalore.
4. The Accountant General,
Teynampet, Chennai - 18.
5. The Special Tahsildar,
Adi Dravidar Welfare,
Chidambaram, Cuddalore District.

+1 CC to the Government Pleader SR.NO.90605

W.P.No.20951 of 2007

PA(CO)
VC (05/02/2018)