

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.4088 to 4090 of 2011

- 1.P.Mohanraj ... Petitioner in WP.No.4088 of 2011
2.S.David Selvaraj ... Petitioner in WP.No.4089 of 2011
3.G.Vaidyanathan ... Petitioner in WP.No.4090 of 2011

Vs

- 1.The Chief Educational Officer,
Cuddalore District,
Cuddalore.

- 2.The Director of School Education,
College Road,
Chennai.

... Respondents in all the WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents herein to pay back to the petitioner withheld increments and the benefits accrued thereon.

(In all the WPs)

For Petitioners : Mr.S.Haja Mohideen Gisthi

For Respondents : Mr.R.Govindasamy

Special Government Pleader

COMMON ORDER

The petitioners in W.P.Nos.4088, 4089 and 4090 of 2011 were all retired Headmasters and were selected by the Tamilnadu Service Recruitment (Direct) and joined as Graduate Teachers in the year 1972. All the three petitioners services were regularized on 03.08.1973. All the three petitioners of the writ petitions were promoted as Headmasters in the year 2001 and continued till their retirements.

2.The petitioner in W.P.No.4088 of 2011 retired on 31.05.2006, the petitioner in W.P.No.4089 of 2011 retired on 31.07.2006 and the petitioner in W.P.No.4090 of 2011 retired on 31.12.2005 respectively.

3.All the three petitioners aggrieved by a communication dated 29.06.2006 withholding the increments, on the ground that the Government Order in G.O.Ms.No.181 dated 29.10.2001 which came into force from 01.03.1984 which states that the Headmasters of High School have to pass the account test for the Executive Officers. Since this G.O.No.181 dated 29.10.2001, the pass in the accounts test for Executive Officers is a must for the purpose of drawing increments by virtue of retrospective nature of the G.O.

4.I heard Mr.S.Haja Mohideen Gisthi, learned counsel appearing for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents and perused the entire records placed before this Court.

5.The learned counsel for the petitioners in all the three writ petitions submitted that Rule 9 of Special Rules for Tamilnadu School Educational Services as if stood on the date of appointment applies to persons who are appointed other than by direct recruitment and all the three petitioners were appointed as Headmasters by transfer in the year 2001. Therefore, any amendment which has some retrospectively on 29.10.2001, which affects the petitioners rights cannot be implemented.

6.The learned counsel for the petitioners further submitted that the petitioners need not challenge the amendment which gave retrospective effect of 23 years backwards, which took away the vested rights of the Government servant. It further stressed that amendment should have only prospective effect from the date of the order i.e. 29.10.2001.

7.The learned counsel for all the three writ petitioners submitted that in the similar circumstances, the Madurai Bench of Madras High Court in a case relating to one Mr.S.Ganesan in W.P.No.3726 of 2004 by order dated 03.08.2007 directed to pay all the withheld increments on the ground that the amendment to Rule 9 cannot be enforced against the petitioner as he had already passed the account test for subordinate officers and the petitioners were also similarly placed. Therefore, the withholding of the petitioner's increments on the basis of the amended G.O. dated 29.10.2001 is not in accordance with law and the petitioners should be paid all the withheld increments.

8.The learned Special Government Pleader Mr.R.Govindasamy, appearing for the respondents does not deny any of the factual things which were placed on records about their recruitment, regularization, promotion to the post of Headmaster and their retirements.

9.The learned counsel states that since the G.O. has retrospective effect from 01.03.1984, the petitioners in the entire three writ petitions failed to comply with the G.O. and hence the increment paid in ought to have been withheld. The G.O.No.181 dated 29.10.2001 was given retrospective effect from 01.03.1984 thereby giving statutory authority to the already existing G.O.No.536 School Education Department, dated 27.03.1982 which was in vogue in all these years, the learned counsel for the respondents submitted that keeping in view of the above G.O.'s, the proceedings in Rc.No.596/A5/ 2006 dated 29.06.2006, order in were issued cancelling the 2nd and 3rd increments sanctioned in the post of Headmaster. He further submitted that the 2nd respondent in proceedings Rc.No.21102/C1-C4/2002 dated 09.09.2004 had also issued instruction that in respect of promotion as Headmaster till 2001, the 2nd increment in respect of Headmaster should be sanctioned only after passing the prescribed test. Hence, prayed for the dismissal of the entire three writ petitions.

10.Upon hearing both the learned counsels, this Court feels that there is no merit in the pleading of the 1st respondent as similarly placed issue was decided by this Court in WP(MD) No.3228 of 2004 in the case of S.Ganesan v. The Chief Educational Officer, Theni, where the Court clearly said that

"...7. Though the appointment order granted to the petitioner clearly states that he should pass the test in terms of Rule 9 of the Tamilnadu Educational Service Rules but on the date of his appointment, the

petitioner had already passed the account test for subordinate officers part-1 in the year 1985-1986 itself. This contention of the learned counsel for the petitioner that Rule 9 item No.1 does not apply to the case of the petitioner because it applies only to categories as provided therein and not to those who appointed otherwise than by direct recruitment is well merited.

8.The learned counsel also says that the amendment for the first item introduces class v to categories found in the bracketed portion and that amendment should have only prospective effect from the date of the order i.e., 29.10.2001, he also stated that even though the amendment has been come into force from 01.03.2004 he need not challenge the said amendment on the ground that such an amendment by giving retrospective effect of 23 years backwards and took away the vested rights of a Government servant and it is a arbitrary and unenforceable. In view of the said right, he need not challenge the said G.O. separately.

9.Though the Government from time to time frames rules under Article 309 which are Legislative in character it can also make rules retrospectively. But those rules cannot take away the vested rights of the Government servants which had already accrued to them and in the present case it deposits the accrued increments as per the rules in force on the date of his appointment. The rule cannot be enforced retrospectively in the case of the petitioner and the learned counsel for the petitioner's arguments is well founded and the writ petitioner has to succeed.

10.Rule 9 as it stood on the date of appointment applies to persons who are appointed other than by direct recruitment. In the present case, the petitioner was appointed by transfer. Even for those the test that was prescribed earlier was account test for subordinate officer's part 1, Rule 9 only prescribes Account test for executive officers for categories those who are appointed by direct recruitment. The very idea of introduction of an amendment is to include the post of headmaster which comes under class v so that they also must pass the account test for executive officers."

11.In as much as the said amendment deprive the right of the petitioners before the amendment, the amendment cannot be enforced against the petitioner.

12.Therefore, the writ petitioner are make out the case before this Court and hence the writ petition is liable to be allowed.

13.In the result:

(a) all the three Writ Petitions in WP.Nos.4088, 4089 and 4090 of 2011 are allowed;

(b) the respondents are directed to release the increment withheld in respect of the petitioners by passing appropriate orders;

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

Sd/-

Assistant Registrar(CS VI)

/TRUE COPY/

Sub Assistant Registrar

vs

To

1.The Chief Educational Officer,
Cuddalore District,
Cuddalore.

2.The Director of School Education,
College Road,
Chennai.

+1 C.C. to M/S.S.Haja Mohideen Gisthi Advocate SR.NO. 74242
dt.20.10.17

Pre-Delivery order made in
WP.Nos.4088 to 4090 of 2011

MR(CO)
T.R (01/11/2017)