

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.31114 of 2013
and
M.P.Nos.1 and 2 of 2013

D.Narayanasamy ... Petitioner
Vs

1. The District Educational Officer
Vellore District.
2. The Assistant Educational Officer
Vellore Rural
Vellore District. ... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records of the first respondent in proceeding bearing O.Mu.No.2926/A3/14, dated 30.7.2013 and the consequential proceeding of the second respondent bearing No.Na.Ka.No.594/A1/2011, dated 21.10.2013 and quash the same.

For Petitioner : Mr.S.Mohan

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

सत्यमेव जयते
ORDER

This writ petition has been filed seeking issuance of writ of Certiorari to call for the records of the first respondent in proceeding bearing O.Mu.No.2926/A3/14, dated 30.7.2013 and the consequential proceeding of the second respondent bearing No.Na.Ka.No.594/A1/2011, dated 21.10.2013 and quash the same.

2. The facts in a nutshell are as under: The petitioner joined in the services of Soosaiappan St.Joseph Boys Higher Secondary School, Tiruvannamalai District on 2.12.1997 as a Mathematics Teachers. He continued to serve in the said aided school till 1.1.2009. Thereafter, the petitioner was selected by the Teacher Recruitment Board and he was directed to join

Kurumalai Panchayath Union Middle School as Mathematics Teacher. Therefore, the petitioner was discharged from Soosaiappar St. Joseph Boys Higher Secondary School, Tiruvannamalai District with effect from 1.1.2009 and he joined duty in Kurumalai Panchayath Union Middle School on 2.1.2009. Subsequently, the petitioner was transferred to Sathuvachari Panchayath Union Middle School, Vellore Rural, Vellore District and he is presently working in the said school.

3. It is averred that, when things stood thus, the second respondent by proceedings dated 28.7.2011 fixed the petitioner's scale of pay based on the last drawn salary as on 1.1.2009. However, the second respondent, by proceedings dated 21.10.2013, referring to the first respondent dated 30.7.2013, reduced the basic pay of the petitioner from Rs.13,900/- to Rs.9,300/- with effect from 2.1.2009 and consequently, ordered reduction of other allowances linked to the basic pay. In other words, the second respondent fixed the pay of the petitioner as a beginner and directed the Headmaster of the Sathuvachari Panchayath Union Middle School to recover the alleged excess payment paid to the petitioner.

4. Assailing the above said proceedings of the respondents, the present writ petition is filed.

5. It is the contention of the learned counsel appearing on behalf of the petitioner that the second respondent vide proceedings dated 28.7.2011 had correctly fixed the scale of pay of the petitioner, is estopped from revising the scale of the petitioner as per the directions of the first respondent on misinterpretation of Rule 26(A) of the Fundamental Rules and the said re-fixation of scale of pay of the petitioner runs counter to G.O.Ms.No.1072, Personnel and Administrative Reforms (FR III) Department, dated 31.10.1986.

6. He further contended that the proceedings of the respondents have been passed in gross violation of the elementary principles of natural justice, as no opportunity was given to the petitioner before passing either of the above proceedings.

7. He submitted that, in any event, the respondents cannot recover the salary paid to the petitioner, as such fixation of pay was not on account of any fraud or misrepresentation by the petitioner.

8. The learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioner is governed by the provisions of the Tamil Nadu Private School Regulation Act and the Rules framed thereunder and there is no

provision for pay protection on his reappointment in government school, though he was paid salary in the aided school from government grant. He added that the petitioner is entitled to only minimum of the time scale applicable to the post of B.T. Assistant by virtue of the proviso to Rule 22 of the Fundamental Rules.

9. I heard Mr.S.Mohan, learned counsel for the petitioner and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the respondents and perused the documents available on record.

10. At the outset, it is to be noted that even though this Court granted interim stay of recovery way back on 20.11.2013, the respondent authorities have not chosen to take steps to vacate the said order till date. In effect and substance, the impugned orders have not been implemented.

11. It is not a case where the petitioner has misrepresented before the respondent authorities. It is the second respondent who fixed the pay of the petitioner by proceedings dated 28.7.2011 and the said order was given effect to. However, the respondent authorities by proceedings impugned in these writ petitions, without even affording an opportunity of hearing to the petitioner reduced his scale of pay and in fact ordered recovery of the excess payment made to the petitioner. These facts are not in dispute at all.

12. It is trite that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice. In the case on hand, nothing has been placed on record to show that the bare bones of the principles of natural justice had been adhered to before passing the orders under challenge, nor does the orders disclose granting of an opportunity to the petitioner. Therefore, on this score alone, the writ petition deserves to be allowed.

13. The principles of natural justice is one of the elementary principles of civilized jurisprudence and is grounded in justice, equity and good conscious. Such rule which is respected the world over cannot be immolated or sacrificed at the alter of administrative convenience or celerity. By now it is well settled that principles of natural justice equally applies to the administrative actions. The rule of audi alteram partem, to wit, that no man shall be condemned unheard and a fair opportunity of being heard should be afforded to him, is a cardinal principal of justice and violation of this rule even in the discharge of administrative duties, which may adversely affect a person, shall vitiate the order/action.

14. The Hon'ble Supreme Court in Bhagwan Shukla v. Union of India, reported in AIR 1994 SC 2480, held that where there is an order of reduction of the pay-scale, which has been passed without affording opportunity, the same is violative of the principle of natural justice. The Hon'ble Supreme Court further held that the such order of reduction of pay scale entails civil consequences and the same cannot be passed without giving a show cause notice or without giving an opportunity of hearing. The said decision is squarely applicable in the instant case.

15. The petitioner has been enjoying higher scale of pay before the impugned orders were passed reducing his scale of pay. No notice or opportunity of hearing was provided to the petitioner. The impugned order entails civil consequences and consequently it is essential that a notice and opportunity of hearing should have been provided, which in the instant case has not been done.

16. For the foregoing reasons, the writ petition is allowed and the impugned orders are set aside and the matter is remanded to the respondent authorities to pass appropriate orders, on merits and in accordance with law, of course after affording an opportunity of hearing to the petitioner. Such orders shall be passed by the respondent authorities within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The District Educational Officer,
Vellore District.

2. The Assistant Educational Officer,
Vellore Rural, Vellore District.

+1 cc to M/s.S.Mohan, Advocate Sr.No.58575

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CSL/17.12.2018