

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.30832 of 2004
and
WP.MP.No.37347 of 2004

A.Sophia Margaret

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. By its Secretary,
Education (School) Department,
Fort St. George, chennai - 9.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Special Deputy Collector,
Kallar Reclamation,
Madurai - 20.
4. The Headmaster,
Government Higher Secondary School,
Regunathapuram,
Ramanad District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's proceedings in Na.Ka.No.147502 K2/2000, dated 18.10.2000 and the third respondent's proceedings in Roc.No.H5/10861/2003, dated 27.08.2003 and the consequential order of the fourth respondent dated 04.10.2004, to quash the same and to direct the respondents to extent all benefits.

For Petitioner

: Mr.L.Chandrakumar

For Respondents

: Mr.R.Govindasamy
Spl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings of the second respondent in Na.Ka.No.147502 K2/2000, dated 18.10.2000; the proceedings of the third respondent in Roc.No.H5/10861/2003, dated 27.08.2003, and the consequential order of the fourth respondent dated 04.10.2004, to quash the same and to direct the respondents to extent all benefits.

2. The facts in brief are as under: The petitioner was appointed as Post Graduate Assistant (English) vide proceedings dated 16.10.1997 of the respondent department and she was initially posted to Government Kallar Higher Secondary School, Melakudalur, Theni District. It is her plea that even at the time of her initial appointment, she was possessing M.Ed. Degree, which she acquired during 1991. She was subsequently transferred to the fourth respondent school during 2003. It is stated that the petitioner was also extended the benefit of pay fixation taking into account her qualification, including incentive increment for having acquired M.Ed. Degree.

3. When things stood thus, the second respondent vide proceedings dated 18.10.2000 stated that appointees between 01.01.1996 and 13.04.1998 are not entitled to incentive increment and, therefore, directed issuance of orders for recovery of payments made in that regard. Based on the said order, the third respondent issued proceedings dated 27.08.2003 fixing the amount to be recovered from the petitioner and similarly placed persons. Consequent to the same, the fourth respondent issued proceedings dated 04.10.2004 ordering recovery of the excess amount.

4. Assailing the above said proceedings, the present writ petition is filed for the relief stated supra.

5. The learned counsel appearing for the petitioner contended that the impugned orders are issued in gross violation of the principles of natural justice, inasmuch as the elementary principles of natural justice had been violated.

6. He further contended that non payment of incentive increment to appointments between 01.01.1996 and 13.04.1998 tantamounts to hostile discrimination inasmuch two similarly placed Post-Graduate Teachers are being treated differently.

7. The learned Special Government Pleader appearing on behalf of the respondents reiterated the stand taken by the respondent authorities in the orders under challenge and prayed for dismissal of the writ petition.

8. I heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents and perused the documents available on record.

9. At the outset, it is to be noted that even though this Court granted interim stay way back on 26.10.2004, the respondent authorities have not chosen to take steps to vacate the said order or to file a counter affidavit till date. In effect and substance, the impugned orders have not been implemented.

10. It is not a case where the petitioner has misrepresented before the respondent authorities. The respondent authorities considering the educational qualification of the petitioner granted her incentive increment. From the date of her appointment, the petitioner was extended all the benefits. These facts are not in dispute at all.

11. 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.

12. Be that as it may, it is averred that in respect of similarly placed person, a Division Bench of this Court in W.P.No.3386 of 2004 granted an interim order of stay of the proceedings dated 27.08.2003, which is also under challenge in this writ petition. Nothing has been placed on record to show as to what transpired in these years.

13. For the foregoing reasons, the writ petition is allowed and the impugned orders passed by the respondents 3 and 4 are set aside and the matter is remitted back to the third respondent to pass appropriate orders, on merits and in

accordance with law, after issuing notice to the petitioner. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Secretary,
State of Tamil Nadu,
Education (School) Department,
Fort St. George, Chennai - 9.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Special Deputy Collector,
Kallar Reclamation,
Madurai - 20.
4. The Headmaster,
Government Higher Secondary School,
Regunathapuram,
Ramanad District.

+1cc to Mr.L.Chandrakumar, Advocate Sr.50232
+1cc to the Government Pleader Sr.50927

सत्यमेव जयते

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and

W.P.M.P.No.37347 of 2004

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