

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32888 of 2013

and

M.P.Nos.1 & 2 of 2013

and

M.P.No.1 of 2014

K.Sakthivel

..Petitioner

vs

1.The Financial Consultant and Accounts Officer(Audit),
Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.

3.The District Educational Officer,
Chengalpattu,
Kancheepuram District.

4.The Head Master,
Government Higher Secondary School,
Pallikkarana
Chennai - 600 100

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings passed by the 1st Respondent in Na.Ka.No.412/A.tha-2/2013 dated 11.11.2013 and the subsequent order of recovery issued by the 4th Respondent in Na.Ka.No.571/13 dated 27.11.2013 and to quash the same.

For Petitioner : M/s.G.Sankaran

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

The order passed by the 1st respondent in proceedings dated 11.11.2013 and the subsequent order of recovery issued by the 4th respondent in proceedings dated 27.11.2013 are under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner was initially appointed as part-time Vocational Instructor on 14.07.1996 in the Department of School Education. Further, he was posted as full-time Vocational Instructor with effect from 21.09.1995 and the post of Vocational Instructor was re-designated as Secondary Grade Special Teacher. The services of the writ petitioner was regularized in the post of Secondary Grade Special Teacher. The writ petitioner acquired the qualification of B.Lit., in May 1997 and M.A., in May 1999. He has further completed M.Phil in April 2003 and B.Ed., in 2009. The petitioner was sanctioned with one incentive increment for B.Ed., and M.A., with effect from 15.04.2009. However, the incentive increments granted for both M.A., and B.Ed., was objected by the audit wing and in this regard, an order was passed in proceedings dated 11.11.2013 stating that there was an excess payment of salary to the writ petitioner. Based on the audit objections, a consequential recovery order was issued in proceedings dated 27.11.2013 stating that the incentive increment granted to the writ petitioner was sanctioned mistakenly and therefore, the excess payment was sought to be recovered.

3.The learned counsel for the writ petitioner made a submission that first of all, the order of recovery was issued without any notice to the writ petitioner and therefore, the order is in violation of the principles of natural justice. Secondly, the writ petitioner was already retired from service during the pendency of the writ petition on 31.05.2017 and this Court has granted interim stay of recovery at the time of admission and now after the retirement of the writ petitioner, no recovery can be imposed. Thirdly, the learned counsel contended that there was no misrepresentation on the part of the writ petitioner and therefore, the fixation was done by the officials working in the office of the respondent and therefore, the amount paid at the instance of the department cannot be recovered, now, after a lapse of many years. In this regard, the Hon'ble Supreme Court of India also in the case of State of Punjab and others Vs. Raffiq Masih, reported in 2015 4 SCC 334 held that in respect of the retired employees, no recovery can be imposed even if there was an excess payment by mistake by the department.

4.Thus, the orders impugned in this writ petition issued by the 1st respondent in proceedings dated 11.11.2013 and by the 4th respondent on 27.11.2013 are quashed.

5.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

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ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1.The Financial Consultant and Accounts Officer(Audit),
Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
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Kancheepuram.

3.The District Educational Officer,
Chengalpattu,
Kancheepuram District.

4.The Head Master,
Government Higher Secondary School,
Pallikkarana
Chennai - 600 100

+1CC to M/s.G.Sankaran Advocate SR.NO.78534

+1CC to Govt Pleader SR.NO.79311

W.P.No.32888 of 2013

[CO]

MK:29/11/2017