

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2017

DELIVERED ON : 05.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12614 of 2012

N.Karthikeyan

... Petitioner

Vs

- 1.State,
rep. by Secretary to Government,
Education Department,
Secretariat, Chennai-600 009.
- 2.The Director of Elementary Education,
D.P.I. Campus,
Chennai-600 006.
- 3.The District Elementary Educational Officer,
Cuddalore.
- 4.The Additional Assistant Educational Officer,
Bhuvanagiri,
Cuddalore.
- 5.The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai-600 018.
- 6.The Treasury Officer, सत्यमेव जयते
Sub-Treasury,
Cuddalore.

...

Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records from the 4th respondent by his proceedings Na.Ka.No.1035/A1/2009, dated 16.3.2012 and quash the same and also quash the proceedings of the 5th respondent No.Endt.No.Pen.20/U No.IV/PPO.No.C361621/---/SCN/11-12/196199 dated 16.3.2012 as illegal, unwarranted and without any jurisdiction and direct the 5th respondent to continue to pay pension and other benefits as disbursed in their proceedings Pen.20/IV/32001584/Rev/2012.

For Petitioner : Mr.T.R.Sundaram

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 to 4

Mr.V.Vijayshankar
for respondents 5 and 6

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records from the 4th respondent by his proceedings Na.Ka.No.1035/A1/2009, dated 16.3.2012 and quash the same and also quash the proceedings of the 5th respondent No.Endt.No.Pen.20/U No.IV/PPO.No.C361621/---/SCN/11-12/196199 dated 16.3.2012 as illegal, unwarranted and without any jurisdiction and direct the 5th respondent to continue to pay pension and other benefits as disbursed in their proceedings Pen.20/IV/32001584/Rev/2012.

2. The case of the petitioner is that he was appointed as Higher Grade Teacher in the Secondary Grade qualification and posted at Panchayat Union Middle School, Bhuvanagiri Panchayat Union, Cuddalore District on 1.1.1971 and subsequently, he was promoted as Headmaster on 2.6.1976 and had worked as such upto 7.7.1977. Thereafter, by the proceedings of the Commissioner of Panchayat Union, dated 8.7.1977, the petitioner was reverted as Assistant Teacher and had worked as Assistant Teacher upto 4.7.1977 and was paid salary as equal to the post of the Headmaster. Later on 4.7.1977, the petitioner was appointed and posted as Headmaster at Bhuvanagiri and had worked upto 31.8.2006 and after seeing his performance, the second respondent extended his service from 1.9.2006 to 31.5.2007 and retired from service on 31.5.2007. After retirement, the petitioner was receiving retirement benefits from the fifth respondent.

3. Further case of the petitioner is that the Government issued G.O.Ms.No.202, dated 24.9.2008 stating that persons who have been appointed as Headmaster before 1.6.1988 and subsequently, reverted as Assistant Teachers, thereafter promoted as Headmasters were eligible for getting all benefits with regard to their reversion period by treating them as Headmasters during that period. According to the petitioner, since the petitioner was appointed as Headmaster on 2.6.1976 and worked upto 7.7.1977, G.O.Ms.No.202 was applicable to him and he was eligible for getting monetary benefits from 1.1.1991 as Special Grade Headmaster, but the respondents 1 to 4 have not regularized the petitioner as Headmaster.

4. By an order dated 5.4.2011, the fourth respondent cancelled the petitioner's eligibility as Headmaster for the period of service and also directed him to deposit the amount which was paid to him as Headmaster for the period from 1.1.1991 to 30.8.2006. Challenging the same, the petitioner had filed W.P.No.28118 of 2011 before this Court. While so, by the impugned order dated 16.3.2012, the 5th respondent revised the pensionary benefits by cancelling the benefits based on Pay Commission recommendation and also directed to adjust the excess paid.

5. Resisting the writ petition, the fourth respondent filed counter stating that after realizing the mistake, by the order dated 5.4.2011, the fourth respondent sent revised proposal to the Accountant General for issue of revised orders and retirement benefit and also ordered to recover the excess amount paid to the petitioner. It is stated that the 5th respondent issued revised pensionary benefits based on G.O.Ms.No.207 and 234 duly cancelling the benefits already granted as per G.O.Ms.No.202 dated 24.9.2008 and therefore, the order issued for recovery of the excess amount was not arbitrary. Since the petitioner was not covered by G.O.Ms.No.202 and he was not transferred from some other Union, his pay was fixed by applying G.O.Ms.No.207 since he was promoted as Elementary School Headmaster after 1.6.1988.

6. Heard the learned counsel for the petitioner, learned Special Government Pleader for the respondents 1 to 4 and the learned counsel for the respondents 5 and 6 and also perused the materials available on record.

7. It appears that admittedly, the petitioner has challenged the impugned communication dated 16.3.2012 of the fourth respondent addressed to the District Collector, Cuddalore. It also appears that challenging the order of the fourth respondent not extending the benefits of G.O.Ms.No.202 and ordering recovery of excess paid to him, the petitioner had filed W.P.No.28118 of 2011 before this Court and the factum of filing of W.P.No.28118 of 2011 has not been disputed by the respondents. Even in impugned communication by the fourth respondent to the District Collector, the factum of filing of W.P.No.28118 of 2011 by the petitioner has been stated.

8. By an order dated 5.12.2017, this Court allowed W.P.No.28118 of 2011 and set aside the order of the fourth respondent dated 5.4.2011, thereby extending the benefits of G.O.Ms.No.202. In the order, this Court observed that recovery of excess payment ordered by the respondent authorities was unsustainable. This Court also directed the 5th respondent to pay arrears of salary benefits to the petitioner in the post as

Headmaster for the period from 2.6.1976 to 8.7.1977 as per G.O.Ms.No.202, dated 24.9.2008.

9. In view of the order passed by this Court in W.P.No.28118 of 2011 dated 5.12.2017 extending the benefit of G.O.Ms.No.202 dated 24.9.2008 to the petitioner, the impugned proceedings of the fifth respondent revising the pay of the petitioner and also the impugned communication of the fourth respondent are liable to be set aside.

10. In the result:

(a) this writ petition is allowed by setting aside the proceedings Na.Ka.No.1035/A1/2009 dated 16.03.2012, passed by the 4th respondent and proceedings No.End.No.Pen.20/UN.IV/PPO.No.C361621 / SCN/11-12/19699 dated 16.03.2012 passed by the 5th respondent.

(b) the 5th respondent is hereby directed to continue to pay pension and other benefits as disbursed in their proceedings Pen 20/IV/32001584/Rev/2012.

(c) the said exercise shall be done within a period of eight 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 Secretary to Government,
Education Department,
Secretariat, Chennai-600 009.

2.The Director of Elementary Education,
D.P.I. Campus,
Chennai-600 006.

3.The District Elementary Educational Officer,
Cuddalore.

4.The Additional Assistant Educational Officer,
Bhuvanagiri,
Cuddalore.

5.The Principal Accountant General (A&E),
No.361, Anna Salai,
Chennai-600 018.

6.The Treasury Officer,
Sub-Treasury,
Cuddalore.

+lcc to Mr.T.R.Sundaram, Advocate, S.R.No.86129

W.P.No.12614 of 2012

CS/09/10/2018



WEB COPY