IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.1618 and 1619 of 2013
and
M.P.Nos.2, 2 and 3 of 2013

P.Tamilarasi ... Petitioner in W.P.1618/2013

T.Veerasamy ... Petitioner in W.P.1619/2013

Vs

1. The Secretary to Government,
(Educational Department)
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2. The Branch Officer in WP1618
The Accounts Officer/
Pen 18 in WP.1619 of 2013
O/o the Principal Accountant General (A&E),
Tamil Nadu, Teynampet, Chennai-600 018.

3. The Directorate of Elementary Education,
College Road, Chennai-600 005.

4. The Additional Assistant Elementary
Educational Officer,
Thiruvarur-610 004.

5. The Assistant Elementary Educational Officer,
Thiruvarur-610 004.

6. The District Elementary Educational Officer,
Thiruvarur-610 004. ... Respondents in both WPs

Writ Petition No.1618 of 2013 is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records relating to Order Na.Ka.No.445/11/A1, dated 02.02.2012 passed by the 4th respondent and the Order No. Nil dated 15.10.2012 passed by the 5th respondent and quash the same and to direct the respondents to grant leave encashment with interest at the rate of 12% per annum.

Writ Petition No.1619 of 2013 is filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for the records relating to Order No.Pen 18/V/41805474/RN/ADK/12-13, dated 29.11.2012 passed by the 2nd respondent and quash the same.

For Petitioners : **Mrs.Y.Kavitha for M/s. Giridhar & Sai**

For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondents 1,3 to 6

Mr.S.Balaji
for 2nd respondent

COMMON ORDER

W.P.No.1618 of 2013 has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records of the 4th respondent in Order Na.Ka.No.445/11/A1, dated 02.02.2012 and the Order of the 5th respondent dated 15.10.2012 and quash the same and also to direct the respondents to grant leave encashment with interest at the rate of 12% per annum.

2. W.P.No.1619 of 2013 has been filed by the petitioner seeking a writ of certiorari calling for the records relating to Order No.Pen 18/V/41805474/RN/ADK/12-13, dated 29.12.2012 passed by the 2nd respondent and quash the same.

3. The case of the petitioners is that they entered into service as Secondary Grade Assistant (petitioner in W.P.No.1618 of 2013) and Assistant Higher Grade (petitioner in W.P.No.1619 of 2013) respectively and after serving in various schools, they were promoted as Headmaster and were also relieved from service on attaining the age of superannuation on 31.7.2011 (petitioner in W.P.No.1618 of 2013) and 31.05.2011 (petitioner in W.P.No.1619 of 2013) respectively on completion of 30 years of service. The petitioners have completed M.A. (History) during May 1993 and in the year 1995, they have completed B.Ed. (History) from Annamalai University. According to petitioners, the Government issued G.O.Ms.No.307, dated 15.12.2000 granting incentive to those who passed Masters Degree directly without doing Bachelors Degree from Open University with effect from 15.12.2000. In view of the aforesaid G.O., the petitioners were

granted the benefit of incentive with effect from 15.12.2000 for having completed M.A., B.Ed.

4. According to petitioners, challenging G.O.Ms.No.307, M.Saraswathi and N.Saraswathi have filed W.P.Nos.6844 and 6845 of 2005 in so far as granting incentive with effect from 15.12.2000 and sought to grant incentive with effect from the date of completion of Master Degree. By an order dated 2.3.2005, this Court allowed the said writ petitions by directing the first respondent to grant incentives with effect from the next date of completion of Master Degree. Pursuant to the orders of this Court, the first respondent issued G.O.Ms.No.29, dated 17.2.2006 stating that the benefit of incentive will be granted from the next date of completion of Master Degree instead of 15.12.2000. While so, the second respondent issued the impugned order communicating that incentives should have been sanctioned to the petitioners on 29.9.1995 itself and that the incentives sanctioned to them on 15.12.2000 has to be cancelled. According to the petitioner in W.P.No.1618 of 2013, by the impugned order dated 15.10.2012, the 5th respondent withheld the leave encashment benefits of Rs.1.20 lakhs against a sum of Rs.1,17,980/-. Challenging the same, the petitioners have filed the writ petitions.

5. Resisting the writ petitions, the second respondent filed counter stating that while scrutinizing the pension proposals, it was noticed that the incentive increments for acquiring higher qualification through Open University were granted to the individual on the date of issuance of G.O.Ms.No.307, instead of the actual date of acquiring the qualification. It is stated that the scheme of granting incentives for teacher for acquiring higher qualification exists from 1969. Totally four incentives i.e. four advance yearly increments are granted to a teacher in the career for qualification such as B.T., B.Ed. M.A. M.Sc. M.Ed. M.Phil. Ph.D. etc. For acquiring Post Graduate qualification no incentive was given but on acquiring teaching qualification two incentives were given in one stroke. Thus, a teacher acquiring M.A. will not be eligible for incentive benefit. On further acquiring B.Ed. he will be granted two incentives for M.A. and B.Ed. According to the second respondent, even before passing of G.O.Ms.No.307, many teachers who acquired degrees through Open Universities were granted incentives and since the order issued in the year 2000, authorities started recovering the incentives granted prior to 15.12.2000. It is stated that the pensionary benefits have been correctly authorized by the second respondent in tune with the Government Orders, which were issued based on the orders of this Court.

6. I heard Ms.Y.Kavitha, learned counsel for the petitioners, Mrs.M.E.Rani Selvam, learned Additional Government

Pleader for the respondents 1,3 to 6 and Mr.S.Balaji, learned counsel for the 2nd respondent in both the Writ Petitions and also perused the materials available on record.

7. The learned counsel for the petitioners submitted that qua the petitioner in W.P.No.1618 of 2013, the impugned orders passed by the respondents recovering the excess incentive already sanctioned to him by withholding leave encashment benefits were arbitrary and unreasonable and violative of Articles 14 and 21 of the Constitution of India. The learned counsel further submitted that unnecessarily, the respondent authorities are withholding the leave encashment amount qua the petitioner in W.P.No.1618 of 2013.

8. The learned counsel would submit that the petitioners have been granted incentives for having completed M.A. B.Ed. as per G.O.Ms.No.307 with effect from 15.12.2000. The Government Order in G.O.Ms.No.29 passed was beneficial legislation and the same cannot be implemented retrospectively to the prejudice of the persons who had acquired vested right relating to incentives already sanctioned and paid. The learned counsel further submitted that the impugned orders have been passed without issuing any notice or granting a hearing to the petitioners.

9. Per contra, the learned Additional Government Pleader for the respondents 1,3 to 6 submitted that pursuant to the Court direction only the Government has issued G.O.Ms.No.29 giving benefit of incentive from the next date of completion of the Masters Degree instead of 15.12.2000 by cancelling G.O.Ms.No.307, dated 15.12.2000 and thus, there is no arbitrariness in passing the impugned orders.

10. Reiterating the counter averments, the learned counsel for the 2nd respondent submitted that the Government implemented the order passed in G.O.Ms.No.29, suitably amending the provisions of G.O.Ms.No.307, dated 15.12.2000 and as per this G.O., incentives to be granted from the date of passing/acquiring higher qualification and the same has become final. Therefore, the petitioners cannot question the impugned order by way of filing these writ petitions.

11. It is seen from the records that the petitioners have not been heard before passing the impugned orders and on this short ground, the writ petitions are liable to be allowed.

12. The Hon'ble Supreme Court, in a decision in Sahib Ram vs. State of Haryana & and others, reported in 1995 Supp. (1) SCC 18, has held as under:

> "5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.

13. Reduction of pay and recovery of pay and/or refixation of pensionary benefits, if any, without hearing the petitioners is illegal. In W.P.No.31727 of 2006, dated 05.11.2007 (N.Kannabiran v. Accountant General Officer and another), the learned Single Judge of this Court has referred to the decision of the Hon'ble Supreme Court in Shyam Babu Verma v. Union of India, reported in (1994) 2 SCC 521 and held that the petitioner cannot be held to be responsible for the fault of the respondents and no recovery be made.

14. In the Shyam Babu Verma v. Union of India, supra, the Hon'ble Supreme Court held as under:

> "11.Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that the scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

15. In Rajasthan State Road Transport Corporation and another Vs. Bal Mukund Bairwa (2), reported in (2009) 4 SCC 299, the Hon'ble Supreme Court observed as under:

> "35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity."

16. The aforesaid decisions are squarely applicable to the case on hand. Thus, this Court as well as Hon'ble Supreme Court in a catena of decisions, time and again reiterated that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice.

17. No prejudice need be proved by enforcing the fundamental rights. Violation of fundamental right itself renders the impugned action void. So also the violation of natural justice renders the act nullity. The purpose of the principles of natural justice is prevention of miscarriage of justice.

18. In a decision in Divisional Superintendent, Eastern Railway, Dinapur and others vs. L. N. Kashri and others, reported in A.I.R. 1974 SC 1889, the Hon'ble Supreme Court held thus:

> "The appellants, having fixed the scale and confirmed the respondents, could not reduce the scale without giving any opportunity to the respondents to be heard. Further more, the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board."

The said decision is also applicable on all fours to the case on hand.

19. It is pertinent to point out that in the case on hand impugned orders were passed by the respondent authorities recovering the excess incentive already sanctioned to the petitioners and also in the case of petitioner in W.P.No.1618 of 2013 withholding the leave encashment benefits are unreasonable. Admittedly, the petitioners have been granted incentives for having completed M.A. B.Ed. as per G.O.Ms.No.307, dated 15.12.2000 giving effect from the date of passing of the said Government Order. Therefore, as rightly argued by the learned counsel for the petitioners, the subsequent G.O.Ms.No.29 of 2006 issued by the respondent authorities was a beneficial legislation, pursuant to the orders of this Court in a particular case and the same cannot be implemented retrospectively to the prejudice of persons who had acquired vested right relating to incentives already sanctioned and paid. In fact, the respondent authorities have passed the impugned

orders after a delay of six years and therefore, recovery cannot be made after superannuation of the petitioners that too in the facts and circumstances narrated above.

20. As stated supra, the order of the respondent authorities recovering the alleged excess incentives, already sanctioned and granted to the petitioners, has been passed without issuing any notice or granting a hearing to them, thereby violating the rule of audi alteram partem. On the sole ground, the impugned orders of the respondent authorities are liable to be quashed.

21. Nothing has been produced to show that on the misrepresentation of the petitioners, the benefit of incentive was given to them. It is well settled that even assuming that there was any overpayment, the same cannot be recovered as held by the Apex Court in a catena of decisions. But, in the case on hand, the petitioners cannot be held to be at fault. Under these circumstances, there was no justification in passing the impugned orders and the same are liable to be set aside.

22. In the light of the above, both the writ petitions are allowed and the impugned orders of the respondent authorities stand quashed. In the case of petitioner in W.P.No.1618 of 2013, the respondent authorities are directed to grant leave encashment to the petitioner therein with interest at the rate of 6% per annum. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)
Dated: 26.09.2018

*** Corrected order to be issued;**
Sd/- Sub Assistant Registrar
Dated: 29.10.2018.

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
   (Educational Department)
   Government of Tamil Nadu,
   Fort St. George,
   Chennai-600 009.

To be substituted to the order already despatched on 27.09.2018.

2.The Branch Officer,
O/o the Principal Accountant General (A&E),
Tamil Nadu, Teynampet,
Chennai-600 018.

3.The Directorate of Elementary Education,
College Road, Chennai-600 005.

4.The Additional Assistant Elementary
Educational Officer,
Thiruvarur-610 004.

5.The Assistant Elementary Educational Officer,
Thiruvarur-610 004.

6.The District Elementary Educational Officer,
Thiruvarur-610 004.

7. The Accounts Officer/Pen 18
O/o the Principal Accountant General (A&E),
Tamil Nadu, Teynampet, Chennai-600 018.

+1cc to Mr.S.Balaji, Advocate, S.R.No.54797
+1cc to the Government Pleader, S.R.No.57980

W.P.Nos.1618 & 1619 of 2013
and
M.P.Nos.2, 2 and 3 of 2013

CS(26/09/2018)
SP(29/10/2018)