

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

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

W.P.Nos.26296 to 26298 of 2007
and
M.P.Nos.2, 2 and 2 of 2007

WP.No.26296 of 2007

S.Victor ... Petitioner

Vs

1. The Director of Collegiate Education
College Road, Nungambakkam
Chennai - 600 006.
2. The Joint Director of Collegiate Education
Tirunelveli Region
Tirunelveli.
3. Bishop Heber College
Rep. by its Secretary
Tiruchirappalli-620 017. ... Respondents

WP.No.26297 of 2007

P.Raja .. Petitioner

Vs

1. The Director of Collegiate Education
College Road, Nungambakkam
Chennai - 600 006.
2. The Joint Director of Collegiate Education
Tirunelveli Region
Tirunelveli.
3. Kamaraj College
rep. by its Secretary
Tuticorin. ... Respondents

WP.No.26298 of 2007

J.Antony Doss

.. Petitioner

Vs

1. The Director of Collegiate Education
College Road, Nungambakkam
Chennai - 600 006.
 2. The Joint Director of Collegiate Education
Trichy Region
Trichy.
 3. Bishop Heber College
Rep. by its Secretary
Tiruchirappalli-620 017.
- .. Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent in Na.Ka.No.12871/B3/2005 dated 18.04.2005, to quash the same and direct the respondents to continue to pay the 5% Special Pay to the Petitioners.

For Petitioners : Mr.R.Subramanian

For Respondents : Ms.M.E.Raniselvam
Additional Govt. Pleader
for respondent 1 and 2

M/s.C.Sangamithirai
for 3rd respondent

ORDER

WP.No.26297 of 2007:

In this writ petition, the petitioner seeks issuance of a writ of certiorarified mandamus to call for the records relating to the impugned proceedings in Na.Ka.No.12871/B3/2005, dated 18.4.2005 issued by the first respondent, to quash the same and to direct the respondents to continue to pay 5% special pay to the petitioner.

2. Succinctly put, the facts of the case are as under: The petitioner joined as Lab Assistant in the third respondent Aided College on 21.12.1987 and his services were regularized on 21.12.1997. He was designated as Lab Assistant (Selection Grade) and thereafter, on 24.6.2005, he was promoted as Junior

Assistant. It is stated that such promotion was approved by the first respondent and on 16.2.2006, the first respondent sanctioned the petitioner an incentive of Rs.100/-, as the petitioner passed Account Test Part I.

3. It is stated that the second respondent by proceedings dated 14.7.2006 directed to recover the incentive awarded to the petitioner based on the proceedings of the first respondent dated 18.4.2005.

4. In such backdrop, assailing the proceedings dated 18.4.2005, the petitioner has filed the present writ petition.

5. The learned counsel appearing for the petitioner submits that the petitioner is holding the post of Junior Assistant and is entitled to all the benefits attached to the said post and deduction proposed to be made is arbitrary, as the same is done without following the bare bones of principles of natural justice, more particularly, without issuing any notice to the petitioner.

6. Per contra, the learned counsel appearing on behalf of the respondents reiterated the stand taken by the respondent authorities and prayed for dismissal of this writ petition.

7. I heard Mr.R.Subramanian, learned counsel for the petitioners, Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 and 2 and M/s.C.Sangamithira, learned counsel for the 3rd respondent in all the writ petitions and perused the documents available on record.

8. The issue involved in this writ petition is no longer res integra. Under identical circumstances, this Court has granted similar relief to the petitioners therein, in the following decisions:

- (i) G.Sundar v. The Joint Director of Collegiate Education and others (W.P.(MD) No.9566 of 2006, dated 8.4.2010);
- (ii) B.Prabakaran and another v. The Director of Collegiate Education and others, (W.P. (MD) Nos.9118 and 9119 of 2007, dated 21.4.2010); and
- (iii) D.Michael Raj and others v. The Accountant General of Tamil Nadu and Pondicherry and others, (W.P. (MD) Nos.3936 and 3955 of 2008, dated 6.10.2016).

9. That apart, 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."

10. This Court as well as Hon'ble Supreme Court in a catena of decisions, time and again reiterates that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice.

11. 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 of nullity. The purpose of the principles of natural justice is prevention of miscarriage of justice.

12. In a decision in Divisional Superintendent, Eastern Railway, Dinapur and others vs. L. N. Kashri and others, reported in AIR 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 squarely applicable in all force to the case on hand.

13. It is pertinent to point out that in the case on hand, in the special circumstances, the petitioner was awarded incentive increment and the same was evident from the proceedings of the respondent authorities referred to in the affidavit filed in support of the writ petition. The respondent authority, having granted the incentive increment ought not to have cancelled the same without giving any opportunity to the petitioner and therefore, the order impugned is in violation of principles of natural justice. Further, recovery from pay, if any, without hearing the petitioner is illegal.

14. For the foregoing reasons, the writ petition in WP.No.26297 of 2007 is allowed and the impugned order passed by the 1st respondent in Na.Ka.No.12871/B3/2005 dated 18.4.2005 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

15. Insofar as W.P.Nos.26296 and 26298 of 2007 are concerned, documents have been produced to the effect that incentive increments have already been granted to the petitioners therein. Therefore, the prayer made in these two writ petitions has become infructuous and these writ petitions are dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

1. The Director of Collegiate Education
College Rad, Nungambakkam
Chennai - 600 006.
2. The Joint Director of Collegiate Education
Tirunelveli Region
Tirunelveli.

+3cc to Mr.R.Subramanian, Advocate SR.No.66490

W.P.Nos.26296 to 26298 of 2007
and
M.P.Nos.2, 2 and 2 of 2007

GMV (11/01/2019)

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