

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.44306/2016 & WMP.Nos.38166 & 38167/2016

K.Pullaiyannan

..Petitioner

Vs

- 1.The Secretary to Government
Finance [P.C.] Department
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Director of Treasuries and Account
Chennai 600015.
- 3.The District Treasury Officer
Dharmapuri, Dharmapuri District.
- 4.The Assistant Elementary Educational
Officer, Nallampalli, Dharmapuri District.
- 5.The Principal Accountant General [A&E]
Teynampet, Chennai-600018.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records relating to the proceedings in the report of the Director of Treasuries and AccountCell under Item No.35, Thiru.K.Pullaiyannan/A946388/SB/Thoppur/Vol.01/21 [Civil] dated Nil pertaining to the petitioner concerned of the 2nd respondent herein and the consequential order in Na.Ka.No.5767/2016/Vu.1 dated 16.09.2016 of the 3rd respondent herein and quash the same and to direct the 2nd and 3rd respondents to pay the monthly pension which received by the petitioner prior to the impugned orders and further direct the respondents to return the amount recovered so far from the pension of the petitioner pursuant to the impugned orders.

For Petitioner : Mr.K.Thennan
For R1 to R5 : Mr.K.Dhananjayan, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 5.

2 The petitioner had worked as the Elementary School Headmaster at Panchayat Union Elementary School, Gundukkal, Kadayampatti Panchayat Union and he was transferred to Nallampalli Panchayat Union Unit on 03.12.1984 and in stead of posting the petitioner as a junior most person in his respective category of Elementary School Headmaster, he was posted in the lower post of Secondary Grade Assistant Teacher at Panchayat Union Middle School on 03.12.1984 and was transferred to Nallampalli Panchayat Union. The petitioner served as the Secondary Grade Assistant in the said Unit between 03.12.1984 and 31.10.1994 and retired on attaining the age of superannuation on 31.10.1994. The petitioner had put in 23 years and 5 months of service in the category of Elementary School Headmaster and it was taken into account and his pay was fixed in the scale of pay applicable to the post of Special Grade Elementary School Headmaster at Rs.2000-60-2300-75-3200 with effect from 01.06.1988 by following G.O.Ms.No.304, Finance [Pay Cell] Department dated 28.03.1990. The grievance expressed by the petitioner is that all of a sudden, without putting the petitioner on notice, the impugned order of recovery came to be passed by the 3rd respondent, overlooking the orders passed by this Court as well as the administrative instructions issued by the Government of Tamil Nadu, in Letter No.26035/Pay Cell/2016-1, Finance [Pay Cell] Department dated 20.05.2016 and therefore, prays for appropriate orders.

3 The learned counsel for the petitioner would submit that in the light of the orders passed by this Court dated 08.12.2008 and 20.04.2011 made in WP.Nos.47501/2005 and 9596/2011 respectively, the pay of the petitioner is protected by G.O.Ms.No.200, Finance [Pay Cell] Department dated 18.05.1999 and admittedly, the petitioner has not been put on notice before effecting the order of recovery and therefore, prays for interference.

4 Per contra, the learned Special Government Pleader appearing for the respondents would submit that the impugned order came to be passed after taking note of all the relevant facts and circumstances and hence, prays for dismissal of the writ petition.

5 This Court has considered the rival submissions and also

perused the materials placed before it.

6 A perusal of the impugned proceedings clearly reveal that before effecting the order of recovery of Rs.1,59,170/-, the petitioner has not been put on notice and it is the specific plea of the petitioner that his pay has been protected as per the above cited orders as well as various Government Orders and therefore, in all fairness, the respondents 2 and 3 before passing the order ought to have put the petitioner on notice. But, they failed to do so and hence, on the sole ground, the impugned order warrants interference.

7 In the result, the writ petition stands partly allowed and the order of the 2nd respondent dated NIL in Item No.35, Thiru.K.Pullaiyannan/A946388/SB/Thoppur/Vol.01/21 [Civil] and the consequential order of the 3rd respondent dated 16.09.2016, are set aside and the matter is once again remanded back to the 2nd respondent for fresh consideration. The impugned notice dated 16.09.2016 issued by the 3rd respondent shall be construed as a show cause notice and the petitioner is at liberty to submit his response/explanation in the form of representation to the respondents 2 and 3 within a period of two weeks from the date of receipt of a copy of this order and the respondents 2 and 3, on receipt of the same, are directed to consider the said representation/explanation on merits and in accordance with law and pass orders within a further period of ten weeks thereafter and communicate the decision taken, to the petitioner. Till such time, the respondents 2 and 3 shall defer the recovery proceedings. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

AP

To

- 1.The Secretary to Government
Finance [P.C.] Department
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Director of Treasuries and Account
Chennai 600015.

3.The District Treasury Officer
Dharmapuri, Dharmapuri District.

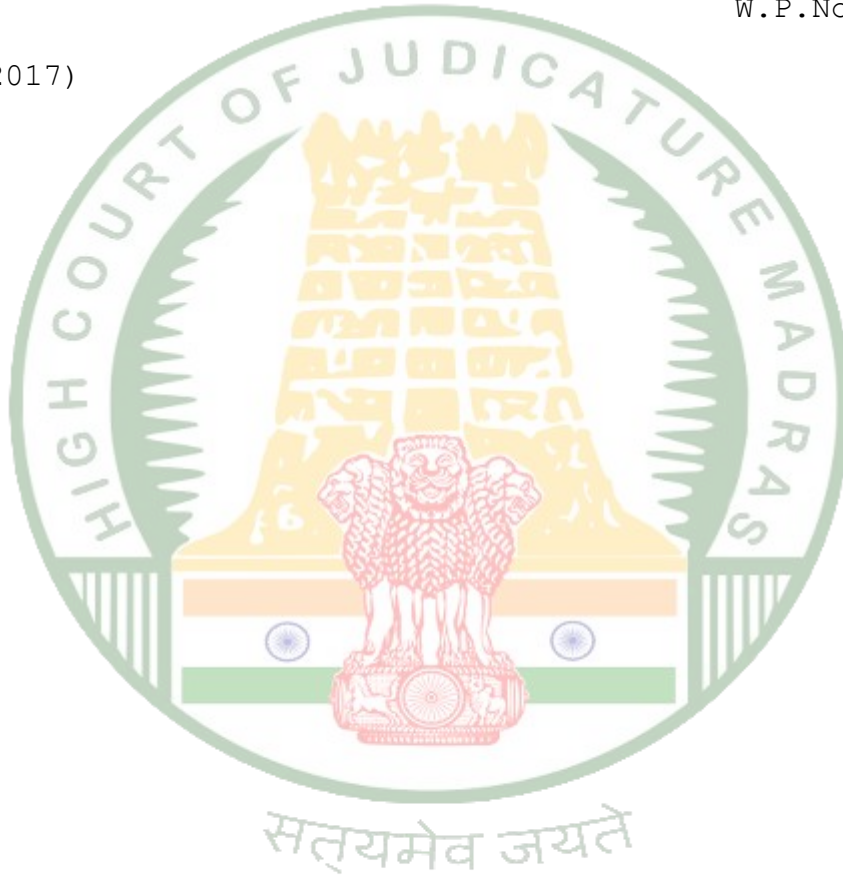
4.The Assistant Elementary Educational
Officer, Nallampalli, Dharmapuri District.

5.The Principal Accountant General [A&E]
Teynampet, Chennai-600018.

+1cc to Mr.K.Thennan Advocate, SR. No.241
+1cc to Government pleader, Sr.No.222.

W.P.No.44306/2016

KS (CO)
GN(19/01/2017)



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