

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2017

CORAM

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

W.P.No.16878 of 2004
and
WP.MP.No.19995 of 2004

V.Vadivel

.. Petitioner

Vs.

The Assistant Elementary Educational Officer,
Arakonam,
Vellore District.

.. Respondent

Prayer : 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 order of the respondent in Na.Ka.No.255/A1/2004,
dated 13.05.2004 and quash the same.

For Petitioner

: Mr.P.Rajendan

For Respondents

: Mrs.E.Rani Selvem

Addl. Government Pleader

ORDER

The petitioner has challenged the order dated 13.05.2004, passed by the respondent, cancelling the incentive increment granted to him on the acquisition of Post Graduate qualification, M.A. and directing recovery of alleged excess payment of Rs.54,016/- from the salary of the petitioner.

2. The case of the petitioner is that he was appointed as Secondary Grade Teacher in Panchayat Union Elementary School, Pudukesavaram, Arakonam Block, Vellore District on 10.11.1987 on contract basis. Thereafter, he was appointed as Secondary Grade Teacher in the scale of pay with effect from 01.06.1988. After acquiring Post Graduate qualification of M.A., the petitioner was allowed two advance increments since 01.06.1988. While so, the respondent had passed the impugned order dated 13.05.2004, cancelling the incentive increments and consequently, re-fixed the scale of pay of the petitioner with effect from 01.06.1988. As a result, of re-fixation, an alleged excess payment of Rs.54,016/- has been ordered to be recovered from the salary of the petitioner.

3. Assailing the impugned order, Mr.P.Rajendran, learned counsel appearing for the petitioner submitted that re-fixation of the petitioner's scale of pay and the consequential order of recovery, without notice to the petitioner involves civil consequences and therefore, the petitioner ought to have been provided with a reasonable opportunity of being heard. He argued that there is a violation of principles of natural justice.

4. The learned counsel further submitted that though the petitioner was initially appointed on contract basis, subsequently, he was appointed in regular time scale of pay. As per G.O.Ms.No.42, Education Department, dated 10.01.1969 and G.O.Ms.No.745, Education Department, dated 01.06.1990, Secondary Grade Teachers possessing higher educational qualification of B.A., M.A., B.Ed. etc. are eligible for incentive increments. He further submitted that the initial appointment on contract basis to the post of Secondary Grade Teacher has no relevance, since the services of the petitioner were later on regularised. The learned counsel would submit that re-fixation of pay and the consequent recovery of excess amount paid to the petitioner are violative of Article 14 of the Constitution of India.

5. I heard Mr.P.Rajendran, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondent and also perused the materials available on record.

6. During the course of argument, the learned counsel for the petitioner brought to the notice of this Court that under similar circumstances, this Court in W.P.No.15444 of 2006 and W.P.No.16566 of 2006 filed by the Tamil Nadu Graduate Secondary Teachers Association, rep. by its General Secretary, by its orders dated 24.01.2008 and 12.03.2008 respectively, set aside the orders re-fixing the scale of pay and the consequential recovery sought to be made from the petitioners therein, who were appointed on contract basis and pursuant thereto, they were regularised in the time scale of pay.

7. The learned counsel for the petitioner also brought to the notice of this Court that similarly placed person viz., one Samuel Sadhu Sundaramani had filed writ petition being W.P.No.28072 of 2006 seeking to quash the order of cancelling the

incentive increment granted to him and also sought direction to the respondents therein not to recover the alleged excess payment made to the petitioner.

8. By an order dated 04.11.2008 in W.P.No.28072 of 2006, this Court, set aside the order of the Assistant Elementary Educational Officer, North Arcot Ambedkar District. The operative portion of the order reads thus:

"8. The facts of the present writ petition are identical with the facts of the above two writ petitions. In view of the similarity of the facts, I am inclined to follow the decisions rendered in the above two writ petitions. Accordingly, the impugned orders refixing the scale of pay of the petitioner and the consequential order of recovery are set aside. The writ petition is allowed. No costs."

9. Admittedly, no material has been produced to show any writ appeal has been preferred and the order of the Single Judge has been set aside. In the absence of any appeal, this Court is of the view that the order in W.P.No.28072 of 2006 attains finality.

10. Following the order passed in W.P.No.28072 of 2006,

dated 04.11.2008, this writ petition is allowed and the impugned order re-fixing the scale of pay of the petitioner and the consequential order of recovery are aside aside. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2017

Note: Issue order copy on 13.07.2018

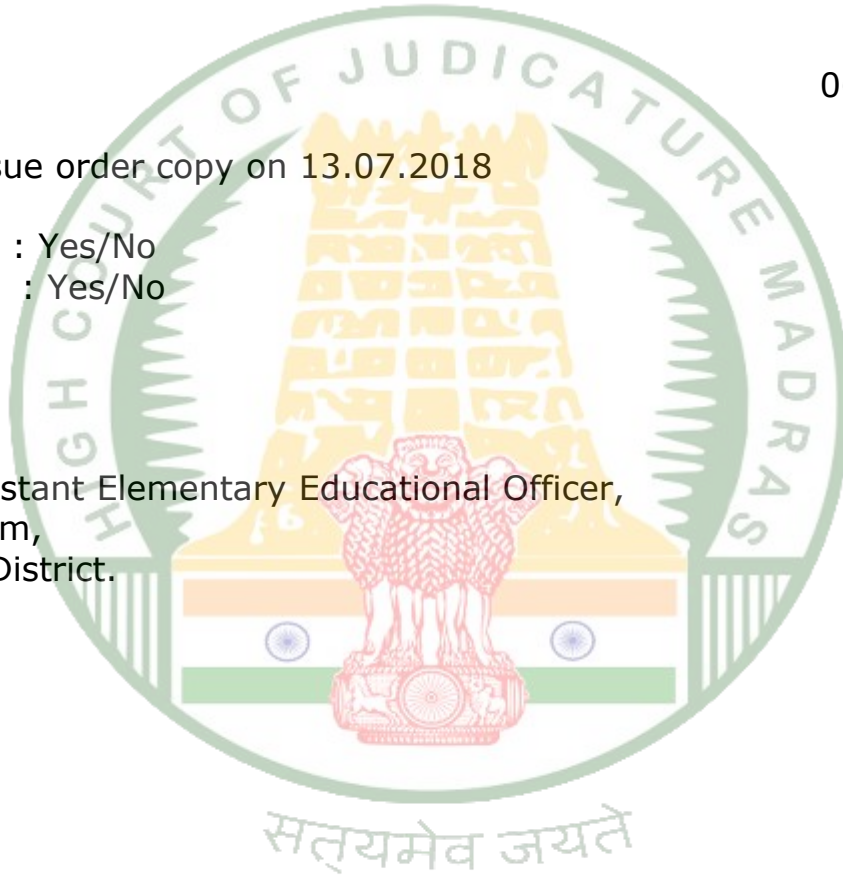
vs

Index : Yes/No

Internet : Yes/No

To

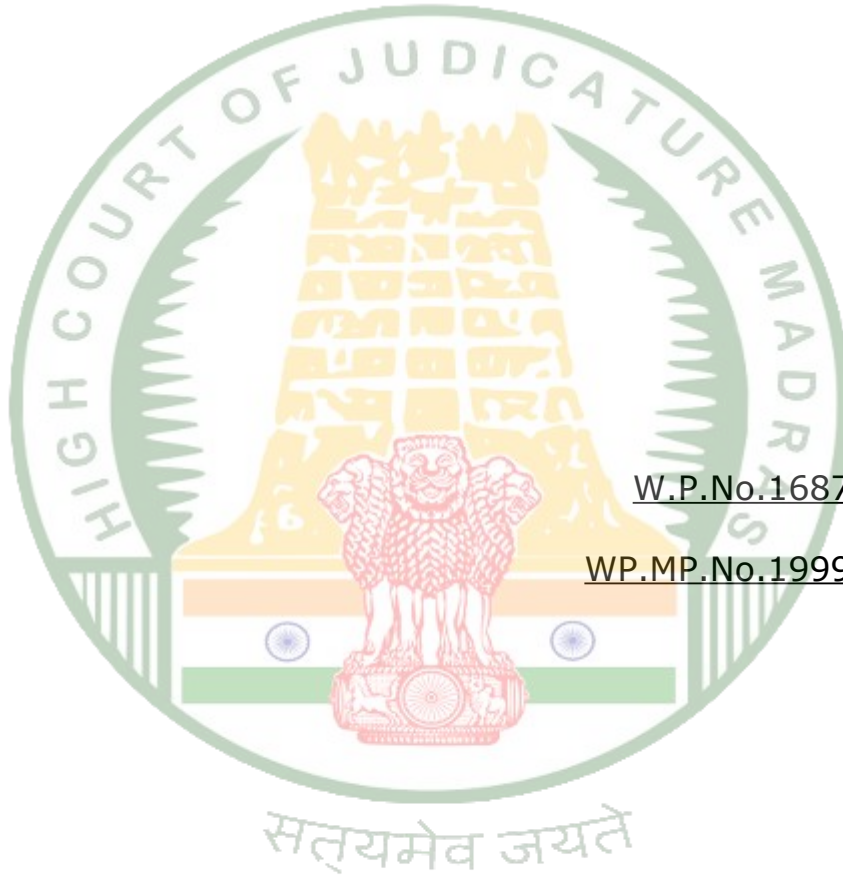
The Assistant Elementary Educational Officer,
Arakonam,
Vellore District.



WEB COPY

M.V.MURALIDARAN, J.

VS



W.P.No.16878 of 2004
and
WP.MP.No.19995 of 2004

WEB COPY

06.07.2017