

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.08.2017

CORAM:

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

W.P.Nos.28173 and 28174 of 2004 and
W.M.P.Nos.34208 to 34211 of 2004 & 6 and 13 of 2008

1.A.Periyasamy ... Petitioner in WP28173/2004
2.A.Ganesan ... Petitioner in WP28174/2004

/Vs/

- 1.The Principal Accountant General (A&E)
O/o. The Principal Accountant General,
261, Anna Salai, Chennai - 18.
- 2.The Additional Assistant Elementary Educational Officer,
Puduchathiram, Namakkal District.
- 3.The District Treasury Officer,
Namakkal District, Namakkal ... Respondents [in both WPs]

Prayer in W.P.No.28173 of 2004:

Writ Petitions filed under Article 227 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned order passed by the second respondent in Na.Ka.No.1338/A3/2002 dated 10.07.2003 and the proceedings of the first respondent in P19/4/P14-169/REV/2004-2005/3028 PPO No.C139455/EDP, dated 27.07.2004 and the proceedings of the third respondent passed in Na.Ka.No.6969/04-B2 dated 05.08.2004 and Quash the same with the consequential Direction, directing the respondents to allow the petitioner to have the Bonus Increment already sanctioned by the second respondent's proceedings dated 20.05.1999.

Prayer in W.P.No.28174 of 2004:

Writ Petitions filed under Article 227 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the impugned order passed by the second respondent in Na.Ka.No.1338/A3/2002 dated 10.07.2003 and the proceedings of the first respondent in P19/1/G12-168/REV/2004-2005/2983 PPO No.C139457/EDP, dated 21.07.2004 and the proceedings of the third respondent passed in

Na.Ka.No.6809/04-M2 dated 05.08.2004 and Quash the same with the consequential Direction, directing the respondents to allow the petitioner to have the Bonus Increment already sanctioned by the second respondent's proceedings dated 22.03.1999.

For Petitioner : Mr.P.Mathivanan
[in both WPs]

For Respondent-1 : Mr.T.Ravikumar
[WP 28173/2004]

For Respondent-1 : Mr.V.Vijayashankar
[WP 28174/2004]

For RR 2 & 3 : Mr.R.Govindasamy
[in both WPs] Special Government Pleader

* * *

COMMON ORDER

This writ petition is preferred by the petitioner against the impugned order passed by the second respondent / Assistant Elementary Educational Officer, Namakkal, in Na.Ka.No.1338/A3/2002 dated 10.7.2003 and the proceedings of the Principal Accountant General (A&E) / 1ST respondent in P19/4/P-14-169/REV/2004-2205-3028 PPO No.C139455/EDP dated 27.7.2004 and the proceedings of the District Treasury Officer, Namakkal / 3rd respondent passed in Na.Ka.6969/Q4-B2 dated 5.8.2004 and quash the same.

2.Brief case of the petitioner:

The facts of the case is that the petitioner was appointed as a Secondary grade teacher on 8.8.1963 and promoted as Headmaster on 7.6.1967 and rendered 31 years of service as headmaster and retired on 31.12.2000. Petitioner was promoted as headmaster and got selection grade scale of pay and special grade scale of pay on completion of 10 years and 20 years respectively. In the year 1998 by way of G.O.Ms.No.562 Finance (pay cell) department dated 28.9.1998 based on the recommendation of the one man commission, Government directs that the employees stagnating in a post beyond 30 years, employees stagnating in the special grade beyond 10 years be granted with one bonus increment as an incentive. On the above said order of the government dated 28.9.1998, by virtue of the proceedings of the Assistant Elementary Educational officer in Na.Ka.No.0701/98/A3 dated 20.5.1999, since petitioner completed more than 30 years of service as elementary school headmaster and completed more than 10 years in special grade, and sanctioned one bonus increment with effect from 1.9.1998.

Subsequently petitioner was retired on 31.12.2000. By virtue of the proceedings of the 2nd respondent in Na.Ka.No.1338/A3/2002 dated 10.7.2003, without any opportunity to the petitioner as against all cannons of law by referring govt. letter dated 11.10.2001, the bonus increment already given to the petitioner from 1.9.1998 has been cancelled and ordered for recovery in an arbitrary and illegal manner.

3.Heard the arguments on either side and perused the entire materials available on record.

4.The learned counsel for the petitioner submits that many representations to the authorities to cancel the audit objection and to authorized the bonus increment without any recovery without considering the representations , the 1st respondent in his proceedings dated 27.7.2004 has revised the pension rates with effect from 1.1.2001 and ordered for recovery from my monthly pension and consequently by virtue of the proceedings of the third respondent dated 5.8.2004 an amount of recovery of Rs.8511/- has been ordered and directed to be deducted and adjusted with monthly pension for 9 months.

5.The learned counsel for the petitioner submits that based on the government in G.O.Ms.No.562 Fin.(Pay Cell) dept. dated 28.9.1998, the petitioner was sanctioned with one bonus increment, since completed more than 10 years of service after the special grade scale of pay, by virtue of the proceedings of the 2nd respondent in Na.Ka.No.0701/98/A3 dated 20.5.1999 , with effect from 1.9.1998.

6.The learned counsel for the petitioner submits that after the lapse of 4 years without giving any opportunity to the petitioner, straight away the orders of recovery have been passed by the respondents. After passing the first impugned proceedings of the 2nd respondent, the petitioner has forwarded his detailed representation dated 15.7.2003 to the 2nd respondent as well as to the authorities concerned, by virtue of the proceedings the 1st respondent dated 27.7.2004 that the amount of Rs.12543/- ordered to be recovered from the amount of pension.

7.The learned Special Government Pleader appearing for the respondents 2 and 3 opposed the contentions of the petitioner/accused and sought for dismissal of the writ petition.

W.P.No. 28174 of 2004

8.This writ petition is preferred by the petitioner against the impugned order passed by the second respondent / Assistant Elementary Educational Officer, Namakkal, in Na.Ka.No.1338/A3/2002 dated 10.7.2003 and the proceedings of the Principal Accountant General (A&E) / 1ST respondent in P19/4/P-14-169/REV/2004-2205-3028 PPO No.C139457/EDP dated 21.7.2004 and the proceedings of the District Treasury Officer, Namakkal / 3rd respondent passed in Na.Ka.6809/Q4-B2 dated 5.8.2004 and quash the same.

9.Brief case of the petitioner:

The facts of the case is that the petitioner was appointed as a Secondary grade teacher on 11.9.1963 and promoted as Headmaster on the same month and rendered 31 years of service as headmaster and retired on 31.12.2000. Petitioner was promoted as headmaster and got selection grade scale of pay and special grade scale of pay on completion of 10 years and 20 years respectively. In the year 1998 by way of G.O.Ms.No.562 Finance (pay cell) department dated 28.9.1998 based on the recommendation of the one man commission, Government directs that the employees stagnating in a post beyond 30 years, employees stagnating in the special grade beyond 10 years be granted with one bonus increment as an incentive. On the above said order of the government dated 28.9.1998, by virtue of the proceedings of the Assistant Elementary Educational officer in Na.Ka.No.0701/98/A3 dated 22.3.1999, since petitioner completed more than 30 years of service as elementary school headmaster and completed more than 10 years in special grade, and sanctioned one bonus increment with effect from 1.9.1998. subsequently petitioner was retired on 31.12.2000. By virtue of the proceedings of the 2nd respondent in Na.Ka.No.1338/A3/2002 dated 10.7.2003, without any opportunity to the petitioner as against all cannons of law by referring govt. letter dated 11.10.2001, the bonus increment already given to the petitioner from 1.9.1998 has been cancelled and ordered for recovery in an arbitrary and illegal manner.

10.Counter objection submitted by the 2nd respondent

The 2nd respondent submit that in G.O.Ms.No.562 Finance (pay cell) department dated 28.9.1998 it was directed the employees who have stagnating in a post beyond 30 years i.e employees stagnating in the special grade beyond 10 years be granted with one bonus increment as an incentive. In the Government letter No.168 Education dated 11.10.2001, it was clarified that the crucial date for counting Bonus increments to the primary

school headmaster to be allowed from 1.6.1988, the date on which higher, separate scale of pay introduce to the primary school headmaster. With reference to the above orders b onus increment sanctioned to the petitioner by the Additional Assistant Elementary Educational officer is incorrect. As per the above orders, to regulate the petitioner pay and allowances, cancelling the previous sanction order, and a fresh order was issued by the Additional Assistant Elementary Educational Officer.

11.With regard to grounds in G.O.Ms.No.562 Finance (pay cell) department dated 28.9.1998, it was directed that employees who have stagnating in a post beyond 30 years i.e. employees stagnating in the special grade beyond 10 years be granted with one bonus increment as an incentive. In respect of the above G.O. a clear clarification has been issued in the Govt.Letter No.168 Education dated 11.10.2001, where by crucial date for counting Bonus increment to the primary school headmaster was to be allowed from 01.06.1988, the date on which higher, separate scale of pay introduce to the primary school headmaster . The petitioner got special grade in the secondary grade Assistant post not in the primary school headmaster post. Hence the petitioner was not eligible for bonus increment.

12.The Additional Assistant Elementary Educational Officer, erroneously sanctioned one bonus increment to the petitioner as an incentive with effect from 1.9.1998. The recovery order was issued to the petitioner based on the clarification letter issued by the Government and the Accountant General Audit objections. Normally audit objection arise only on later dates, due to the above occurrence, revised order has been issued in the latter date. The petitioner has not given any representation regarding his disability to re-pay the amount by installment basis. Without giving any request to department straightaway approached the Hon'ble Court against the revised recovery order. It has been clearly and categorically stated in G.O.MS.No.562 Finance (pay cell) department dated 28.9.1998 that the employees stagnating in a post beyond 30 years (i.e) employees stagnating in the special grade beyond 10 years be granted with one bonus increment as an incentive.

13.The learned counsel for the petitioner submits that many representations to the authorities to cancel the audit objection and to authorized the bonus increment without any recovery without considering the representations , the 1st respondent in his proceedings dated 21.7.2004 has revised the pension rates with effect from 1.1.2001 and ordered for recovery from the

petitioner's monthly pension and consequently by virtue of the proceedings of the third respondent dated 5.8.2004 an amount of recovery of Rs.8511/- has been ordered and directed to be deducted and adjusted with monthly pension for 9 months.

14.The learned counsel for the petitioner submits that based on the government in G.O.Ms.No.562 Fin.(Pay Cell) dept. dated 28.9.1998, the petitioner was sanctioned was sanction with one bonus increment, since completed more than 10 years of service after the special grade scale of pay, by virtue of the proceedings of the 2nd respondent in Na.Ka.No.0701/98/A3 dated 22.3.1999 , with effect from 1.9.1998.

15.The learned counsel for the petitioner submits that after the lapse of 4 years without giving any opportunity to the petitioner, straight away the orders of recovery have been passed by the respondents. After passing the first impugned proceedings of the 2nd respondent, the petitioner has forwarded his detailed representation dated 15.7.2003 to the 2nd respondent as well as to the authorities concerned, by virtue of the proceedings the 1st respondent dated 27.7.2004 that the amount of Rs.12,543/- ordered to be recovered from the amount of pension.

16.The impugned orders in both the writ petitions were passed by the respondent by violating the natural justice without giving opportunity to the petitioners. This Court by order dated 30.09.2004 granted an order of interim stay and the same is still in force. The respondents have also not filed any vacate stay and the stay is in force for the past 15 years. Therefore, it is just and necessary the writ petition is liable to be allowed.

17.In the result, both the writ petitions are allowed by setting aside the impugned orders. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Principal Accountant General (A&E)
O/o. The Principal Accountant General,
261, Anna Salai, Chennai - 18.
- 2.The Additional Assistant Elementary Educational Officer,
Puduchathiram, Namakkal District.
- 3.The District Treasury Officer,
Namakkal District, Namakkal.

+1 cc to Mr.T.Ravikumar, Advocate, S.R.No.58457

+1 cc to Mr.V.Ravikkumar, Advocate, S.R.No.58478

+1 cc to the Government Pleader, S.R.No.61308

W.P.Nos.28173 and 28174 of 2004 and
W.M.P.Nos.34208 to 34211 of 2004
and 6 and 13 of 2008

KK(CO)
SSM(19/03/2019) .



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