

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.06.2018
CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos.40176 and 40177 of 2006
and M.P.No.1 & 1 of 2006

M.K.Radhakrishnan

...Petitioner in
W.P.No.40176/2006

D.Ramachandran

...Petitioner in
W.P.No.40177/2006

Versus

- 1.The Government of Tamilnadu,
rep.by its Secretary,
School Education Department,
Fort St.George,
Chennai-600 009.
- 2.The Joint Director of School
Education (Higher Secondary),
College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Uthagamandalam.
- 4.The Headmaster,
Government Higher Secondary School,
Bitherkad-643 240.
Uthagamandalam Post.

...Respondents
in both W.Ps.

COMMON PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the proceedings of the fourth respondent dated 18.09.2006 made in Na.Ka.No.107/2006, and quash the same.

In both W.Ps.

For Petitioner

: Mr.R.Saravanakumar

For Respondents

: Mr.K.Ravikumar, AGP.,

COMMON ORDER

The petitioners have filed these Writ Petitions challenging the order of the fourth respondent dated 18.09.2006, wherein the fourth respondent ordered for recovery of the amount paid in excess to the petitioners and to re-fix the pay.

2.Since the prayer in these Writ Petitions are same, these Writ Petitions are taken up for common disposal.

3.The case of the petitioners is that the petitioners are appointed as Vocational Teacher in the fourth respondent school on 20.10.1989. Thereafter, the petitioners are appointed in the fourth respondent school, in sanctioned post and are continuously working as Vocational Teacher for the Higher Secondary Course ever since their appointment in 1989. Thereafter, the petitioners were brought on time scale of pay with effect from 23.09.1994 vide G.O.Ms.834 and the proceedings of the third respondent dated 20.11.1995. The petitioners were given the Secondary Scale of Pay on the ground that there was no vacancy for the post of Vocational Teacher. However, the petitioners were working as Vocational Teacher only in the permanent vacancy in the fourth respondent school and they were handling classes for the Higher Secondary students only in the Vocational Stream. However, on 10.06.2002, the Government passed a G.O., and recalled Grade-I and Grade-II Vocational teachers and declared that the Vocational teachers would be eligible to get B.T., scale of pay. While such being the position, the second respondent issued the impugned order dated 18.09.2006, stating that the petitioners were working as Vocational Teacher from 20.10.1989, and vide proceedings of the third respondent dated 06.01.1995, the petitioners are entitled to secondary grade scale of pay. However, since the petitioners were given the B.T.scale of pay, the petitioners are stated to have drawn excess pay from 01.01.1996 to 10.06.2002 and the same is sought to be recovered and the pay scale is sought to be re-fixed. Aggrieved by the impugned order, the present Writ Petitions.

3.Heard both sides.

4.The learned counsel for the petitioners would submit that the petitioners have been working as Vocational Teacher ever since the date of appointment in 1989 and has been handling the classes only for the Higher Secondary students of the vocational stream. However, without following the due process of law and without calling for an explanation, observation was made and the petitioners pay was reduced and ordered for recovery of excess pay, which was already drawn by the petitioners and it is a clear case of violation of principles of natural justice and no

opportunity was given to the petitioners.

5.The learned Additional Government Pleader opposed the contention of the petitioners that before passing the impugned order, opportunity was given to the petitioners and the excess pay drawn by the petitioners are sought to be recovered and re-fix the pay scale. However, the Government Pleader did not place any materials to show that opportunity was given to the petitioners before passing the impugned order.

6.It is settled law that any proceedings can be initiated after giving due opportunity to the persons concerned. In the present case, no opportunity was given to the petitioners. Without giving any opportunity, the present impugned order has been passed. Hence, the impugned order is not sustainable one and this Court is inclined to interfere with the order passed by the fourth respondent. Accordingly, the impugned order dated 18.09.2006 passed by the fourth respondent is set aside and the matter is remanded back to the Authority for fresh consideration and for passing appropriate orders after giving due opportunities to the parties in accordance with law.

7.In the above terms, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Government of Tamilnadu,
School Education Department,
Fort St.George,
Chennai-600 009.
- 2.The Joint Director of School
Education (Higher Secondary),
College Road,
Chennai-6.
- 3.The Chief Educational Officer,
Uthagamandalam.

4.The Headmaster,
Government Higher Secondary School,
Bitherkad-643 240.
Uthagamandalam Post.

+1 cc to Mr.R.SARAVANA KUMAR, Advocate SR.No.40693

+2 cc to Government Pleader SR.No.41452, 41453

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SR(CO)
SMI/21.08.2018



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