

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21424 of 2007
and
M.P.Nos.1 & 2 of 2007

S.Sivagnanam

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Represented by the
Secretary to the Government,
Adhi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai - 9.
2. The Director of Adhi Dravidar &
Tribal Welfare,
Chepauk, Chennai - 5.
3. The District Adhi Dravidar Welfare Officer,
Cuddalore District, Cuddalore.
4. The Accountant General,
(Adhi Dravidar Welfare)
Chidambaram Taluk,
Cuddalore District.
5. The Special Tahsildar,
(Adhi Dravidar Welfare)
Chidambaram Taluk,
Cuddalore District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 4th and 5th respondents issued in Na.Ka. E/757/2004 dated 11.08.2005 issued by the 5th respondent and the order issued in AG (A & E)/PEN P09/1/S137 - 765/RTD/2005-2006/7126 dated 15.09.2005 by the 4th respondent and quash the same and issue a consequential direction to the respondents to release the amount of Rs.1,68,655/- with 18% interest per annum

and to restore the pay of petitioner at Rs.1700/- in the scale of pay of Rs.1640 - 2900/- in the selection grade scale of pay of primary school Headmaster with effect from 01.06.1988 and grant the consequential monetary benefits and fix last drawn pay and grant pensionary benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents: Mr.K.Ravikumar
Additional Government Pleader
for R1 to R3
Mr.V.Vijayshankar for R4

O R D E R

The petitioner has filed the Writ petition challenging the order passed by the 4th and 5th respondents issued in Na.Ka. E/757/2004 dated 11.08.2005 and the order issued in AG (A & E)/PEN P09/1/S137 - 765/RTD/2005-2006/7126 dated 15.09.2005 and quash the same and directing to release the amount of Rs.1,68,655/- with 18% interest per annum and to restore the pay of petitioner at Rs.1700/- in the scale of pay of Rs.1640 - 2900/- in the selection grade scale of pay of primary school Headmaster with effect from 01.06.1988 and grant the consequential monetary benefits and fix last drawn pay and grant pensionary benefits.

2. The case of the petitioner is that the petitioner was initially appointed as Head Master in a Primary School, Thenpathi, Chidambaram Taluk receiving aid from the Government of Tamil Nadu. Though he was worked in the said post from 07.09.1970 to 06.08.1975, thereafter the petitioner was appointed as Higher Grade Teacher on 07.08.1975 in the department of Adhi Dravidar and Tribunal Welfare at Karuppur, Chidambaram Taluk as sponsored by the District Employment Exchange. Then, he was promoted as Secondary Grade Teacher on 31.03.1978.

3. The petitioner further aver that on 01.06.1988 the post of primary school Headmaster and secondary grade teacher were treated as transferable interchangeable and one and the same on the ground that both the posts carried same scale of pay. Therefore, the petitioner was posted as Primary School Headmaster at Adhi Dravidar Welfare School at Vialur on 01.07.1987. As pay was fixed in the scale of pay of Rs.610-1025/-, as per the recommendation of the 5th pay commission under the G.O.Ms.No.666 dated 26.07.1989, the scale of pay for the post of Primary School Headmaster is higher than the Secondary Grade Teacher (i.e) Primary School Headmaster is Rs.1400-2600 and the Secondary Grade Teacher is Rs.1200-2040. Thereafter the

respondent/Government of Tamil Nadu has issued G.O.Ms.No.1381 dated 05.10.1990 and directed that the teachers who were in a position as Primary School Headmaster as on 01.06.1988 are entitled to count the service rendered in the post of Secondary Grade Teachers as well as Primary School Headmaster for the award of selection grade and special grade pay, in the post of Primary school Headmaster as he was holding the post of Primary School headmaster as on 01.06.1988. Accordingly, the petitioner was allowed to continue in the post of Primary School Headmaster and his pay was fixed in selection grade scale of pay of Primary School Headmaster i.e., Rs.1640-2900 by counting both the services rendered in the post of Primary School Headmaster and Secondary Grade Teacher.

4. While that being so, the petitioner was reverted to the post of Secondary Grade Teacher on 24.01.1990 on the ground that the petitioner have no seniority to continue in the post of Primary School Headmaster without any pay protection. Even after reversion, he was allowed to draw his pay in the post of Primary School Headmaster till 18.07.2001. Thereafter, the petitioner retired from service on 31.12.2004. His pension proposals were sent to the Accountant General for sanction. The fifth respondent has stated that in spite of his reversion, he was allowed to draw the selection grade scale of pay in the post of primary school headmaster from 01.06.1988 and therefore the petitioner have to refund the alleged excess payments drawn for the period from 24.01.1992 to 31.12.2004 and the alleged excess sum comes to Rs.168655.00 and the said amount has to be recovered from his gratuity and sent a proposal to the fourth respondent. As such, the above said amount was recovered from his gratuity by the Accountant General and the petitioner was paid only Rs.49096/- as an amount of gratuity from the total amount of gratuity Rs.217751.00/- Aggrieved by the said recovery order of the fifth respondent dated 11.08.2005 and the consequential order of the Accountant General dated 15.09.2005, the present writ petition is filed.

5. The learned counsel for the petitioner submitted that though the petitioner was appointed as a Headmaster in a Primary School in the year 1970, thereafter, he was promoted as Secondary Grade Teacher in the year 1978 and he continued the said post till the retirement i.e 2004. However, the fourth respondent objected the petitioner pay protection and the alleged excess amount paid to the petitioner only in the year 1992. After retirement the fifth respondent sent a pension proposal to the fourth respondent, after retirement the fourth respondent objected the payment. The petitioner was reverted in the year 1990. Thereafter, he received a higher scale of pay in the post of Primary School Headmaster. Accordingly, the excess amount paid to the petitioner and the remaining amount recovered

from the petitioner without any notice and it is unexpected one. Therefore, the petitioner filed the Writ Petition.

6. The undisputed facts are that the petitioner was appointed as Primary School Headmaster in the year 1970 and thereafter he was appointed as Higher Grade Teacher on 07.08.1975 and again he was promoted as Secondary Grade Teacher on 31.03.1978 and he was posted as Primary School Headmaster at Adhi Dravidar Welfare School on 01.07.1987. Though the petitioner was reverted to the post of Secondary Grade Teacher on 24.01.1990 on the ground that the petitioner have no seniority to continue in the post of Primary School Headmaster without any pay protection. Even after reversion, the petitioner was allowed to draw his pay in the post of Primary School Headmaster till 18.07.2001 and till his retirement he has received the said amount. Thereafter, he retired on 31.12.2004. The fourth respondent has not taken any action for recovering the said alleged excess amount and he was allowed to draw the said amount till his retirement and even recovery was passed without notice and the respondent did not comply the principles of natural justice and without giving any opportunity to the petitioner, the said recovery order was passed.

7. In this background, it is necessary to refer the Hon'ble Apex Court, reported in (2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others, the relevant portion of which, reads as follows.

"10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the state, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would

breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases when an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

8. In view of the above decision cited supra, I am inclined to set aside the impugned orders dated 11.08.2005 and 15.09.2005 and the respondents are directed to refund the said amount of Rs.1,68,655/- without interest and the consequential prayer with regard to the selection grade scale of pay of Primary School Headmaster with effect from 01.06.1988 and monetary benefits is hereby rejected.

With the above directions, the Writ Petition is allowed. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dh
To

- 1.The Secretary to the Government,
Adhi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai - 9.
2. The Director of Adhi Dravidar &
Tribal Welfare,
Chepauk, Chennai - 5.
3. The District Adhi Dravidar Welfare Officer,
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Chidambaram Taluk,
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5. The Special Tahsildar,
(Adhi Dravidar Welfare)
Chidambaram Taluk,
Cuddalore District.

+1cc to Mr.V.Vijay Shankar, Advocate Sr.48230
+1cc to the Government Pleader Sr.48974

W.P.No.21424 of 2007

rk[co]
srg 15/10/2018