

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23043 of 2013
M.P.Nos. 1 of 2013 and 1 of 2014

D.Balu

... Petitioner

Vs.

- 1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai 600 009.
- 2.The Joint Director of School
Education (Vocational Education)
College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Cuddalore District,
Cuddalore.
4. The Head Master,
Municipal Higher Secondary School,
Cuddalore - 607 001.
Cuddalore District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the orders of the 4th respondent in Na.Ka.47/2013 dated 25.03.2013 relating to re-fixation and recovery of pay and quash the same.

For Petitioner : M/S.S.Kamadevan

For Respondents : Mr.K.Karthikeyan,
Government Advocate.

O R D E R

The Order of recovery and re-fixation of pay issued by the 4th respondent in proceedings dated 25.03.2013 is under challenge in this writ petition.

2. The petitioner was initially appointed as a single Part-time Vocational Instructor (Accountancy & Auditing) on 01.08.1984 and double part time Vocational Instructor with effect from 01.06.1988. Subsequently, the writ petitioner was brought under the regular establishment in the time scale of pay as Vocational Instructor Grade-I, with effect from 01.04.1990. The petitioner completed probation and accordingly his services were regularised with effect from 01.04.1990. The selection grade and special grade pay was granted to the writ petitioner in accordance with the Government Orders in force.

3. However, during the course of audit objection, it was found that the fixation granted in favour of the writ petitioner was erroneous and an excess payment was made to the writ petitioner on account of wrong fixation of pay. Consequently, the pay as applicable to the writ petitioner has been revised and accordingly, the revised pay is directed to be paid through the impugned order. The excess payment already paid is also sought to be recovered from the writ petitioner.

4. The learned counsel, appearing on behalf of the writ petitioner, made a submission that the impugned order of reduction of pay and recovery has been imposed without issuing any show cause notice and opportunity to the writ petitioner. The writ petitioner was deprived of his opportunity to defend his case. Thus the impugned order is in violation of the principles of natural justice.

5. The learned Government Advocate, appearing on behalf of the respondents, is unable to dispute the fact that any notice was issued to the writ petitioner before passing the impugned order of reduction of pay and recovery.

6. This court is of the opinion that any order affecting the service condition or pay of an employee is to be passed only after issuing show cause notice and providing opportunity to the employee concerned. Thus, the impugned order is liable to be set aside on the ground of violation of the principles of natural justice.

7. Thus, this court is of the view that the present case is a fit case for remittance. Accordingly, the impugned order passed by the 4th respondent in Na.Ka. No.47/2013 dated 25.03.2013 is quashed. The respondents are directed to issue

show cause notice to the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order. On receipt of explanations or objections, if any, from the writ petitioner, the authorities competent are at liberty to take a decision and pass order in accordance with the Government Orders and as per the rules in force, within a period of 12 weeks thereafter.

8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Svn/msvm

To

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Cuddalore District.

+1cc to M/S.S.Kamadevan, Advocate sr.no43674
+1cc to Government Pleader sr.no.44535

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nr 16/07/2018