

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 24343 of 2007
and M.P.No.1 and 2 of 2007

I.Oliyalagan

...Petitioner

Versus

- 1.The Director of Elementary Education,
College Road, Chennai-6.
2. The District Elementary Educational Officer,
Coimbatore District, Coimbatore.
3. The Assistant Elementary Educational Officer,
Karamadai Panchayat Union,
Karamadai, Coimbatore District. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent in relation to the proceedings issued in Na.Ka.No.1182/A5/2007 dated 06.07.2007, quash the same and issue a consequential direction to the respondents to allow the petitioner as Primary School Headmaster at Vijayanagaram, Karamadai Panchayat Union, Coimbatore District with service and monetary benefits.

For Petitioner : Mr.R.Saseetaaran
For Respondents : Mr. P.Raja
Government Advocate.

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O R D E R

The writ petition has been filed challenging the reversion order dated 06.07.2007, passed by the second respondent, wherein the petitioner was reverted from the post of Primary School Headmaster to Secondary Grade Teacher.

2.The petitioner was initially selected by the Teachers Recruitment Board for the post of Secondary Grade Teacher

as per the State wise selection. Accordingly, he was appointed as Secondary Grade Teacher on 01.08.1995 at Panchayat Union Elementary School, Manar, Coonoor, The Nilgiris District and joined in the said post. In the order of appointment, his rank was shown as 13. Thereafter, the petitioner was transferred and posted as Secondary Grade Teacher at Thekkampatti, Karamadai Panchayat Union, Coimbatore on 01.11.2001. The petitioner's rank in the seniority list of the Secondary Grade Teachers for Karamadai Panchayat Union for the year 2004, was shown as 61 and in the panel of Secondary Grade Teachers fit for the promotion to the post of Primary School Headmaster, his rank was shown as 21. The rank was assigned in the appointment order as per the rank given by the Teachers Recruitment Board. Thereafter in the year 2005, the petitioner's rank was shown as 13 for promotion to the post of Primary School Headmaster and as such he was promoted as Primary School Headmaster by an order of the 2nd respondent dated 23.07.2005. Accordingly, he joined at Gopnar Panchayat Union School in Karamadai Panchayat Union and continued till 2006 and thereafter transferred to Panchayat Union Primary School, Vijayanagaram in Karamadai Panchayat Union and served as Primary School Headmaster for more than two years. While such being the position, after a lapse of 12 years of appointment, the 3rd respondent issued a show cause notice on 28.05.2007 calling upon the petitioner to show cause as to why he should not be reverted to the post of Secondary Grade Teacher, on the ground that he has given his Teachers Recruitment Board rank as 13 wrongly and obtained a promotion. Thereafter, the petitioner has gave his explanation on 30.05.2007 explaining that the rank was assigned by the Teachers Recruitment Board in his appointment order itself and the same is maintained for the past 12 years. However, the authorities did not accept his explanation and passed the impugned order reverting the petitioner from the post of Headmaster to Secondary Grade Teacher.

3. Heard both sides.

4. The learned counsel appearing for the respondents produced a ranking list released by the Teachers Recruitment Board, before this Court and the same was perused by the learned counsel for the petitioner. In the said

list, the petitioner's name is found as I.Oliyalagan and his Sl.No., is 13 and the rank is assigned as 1261.

5. In view of the undisputed facts, I do not find any illegality in the order of reversion. However, only based

on the earlier rank assigned by the District Elementary Educational Officer, Coimbatore in the appointment order, the petitioner was granted promotion to the post of Primary School Headmaster and not on his mis-representation. Accordingly, the authority should not recover the amount which was already received by the petitioner in which he was working in the past. In this regard, it is relevant to extract the following decisions:

(i) The un-reported decision of this Court dated 15.12.2017 passed in W.P.No.20951 of 2007, the relevant portion of which reads as follows:

"13. As rightly contended by the learned counsel for the petitioner that the Administration did not follow the seniority in the post of Secondary Grade Teacher as on 01.06.1988 while Secondary Grade Teacher was posted to act as Headmaster of Primary School and such posting was not objected to by the senior Secondary Grade Teacher for the simple reason that the posts were interchangeable and carried the same pay scale. However, as the situation changed with effect from 01.06.1988, the posting to act as Headmaster of Primary School, did create a hurt burn among the senior Secondary Grade Teachers, since they could not be posted to act as Headmaster of Primary School, though being seniors, for want of vacancies. Therefore, their case for equal pay as that of Headmasters of Primary Schools, who were acting as such with effect from 01.06.1988, cannot be denied under any circumstances and the same would be clearly discriminatory and violative of Article 14 of the Constitution of India.

14. Moreover, it has to be seen that the petitioner although acted as Headmaster for some time prior to 01.06.1988 was denied the higher pay scale, while the same was given to some of his juniors, who by virtue of being in the post of Primary School Headmaster on the crucial date on 01.06.1988. The anomaly and disparity of the pay scale is quite apparent much on the face of it and such anomaly was

recognised and addressed by the authorities and therefore, the petitioner was rightly granted stepping-up of pay on par with his juniors originally. In such view of the matter, this Court does not find any valid justification for reversing the order of stepping up of pay and for recovery of the amount on the basis of so called excess payment made to the petitioner."

(ii) The decision of the Hon'ble Supreme Court reported in (1994) 2 SCC 521 (Shyam Babu Verma and others Vs. Union of India and others), the relevant portion of which reads as follows:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

(iii) The decision of the Hon'ble Supreme Court reported in 1995 Supp (1) SCC 18 (Sahib Ram Vs. State of Haryana and others), the relevant portion of which reads as follows:

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher

pay scale was given to him but by wrong construction made by the principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

(iv) The decision of the Hon'ble Supreme Court reported in (2007) 6 SCC 180 (Babulal Jain Vs. State of M.P. and others), the relevant portion of which reads as follows:

"15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. The appellant has discharged higher responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law. He was at least entitled to some allowances. In refixing his pay, his claim to that effect has not been considered. He has since retired. A sum of Rs.22,000 has been recovered from him. Such recovery has been effected without issuing any show-cause notice. His case on merit in this behalf had not been considered by the Government and even by the Tribunal."

6. However, the order passed by the 2nd respondent reverting the petitioner from the post of Primary School Headmaster to Secondary Grade Teacher is a justifiable one. In view of the above decisions, the authority is not liable to recover the differential amount from the petitioner. Accordingly, the impugned order dated 06.07.2007 is upheld, to that extent indicated above. However, this order will not stand in the way of the petitioner to enjoy the post of the Primary School Headmaster, subsequently promoted as Headmaster, as per the seniority list assigned by the Teachers Recruitment Board.

7. On the above terms, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CSiv)

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Sub Assistant Registrar

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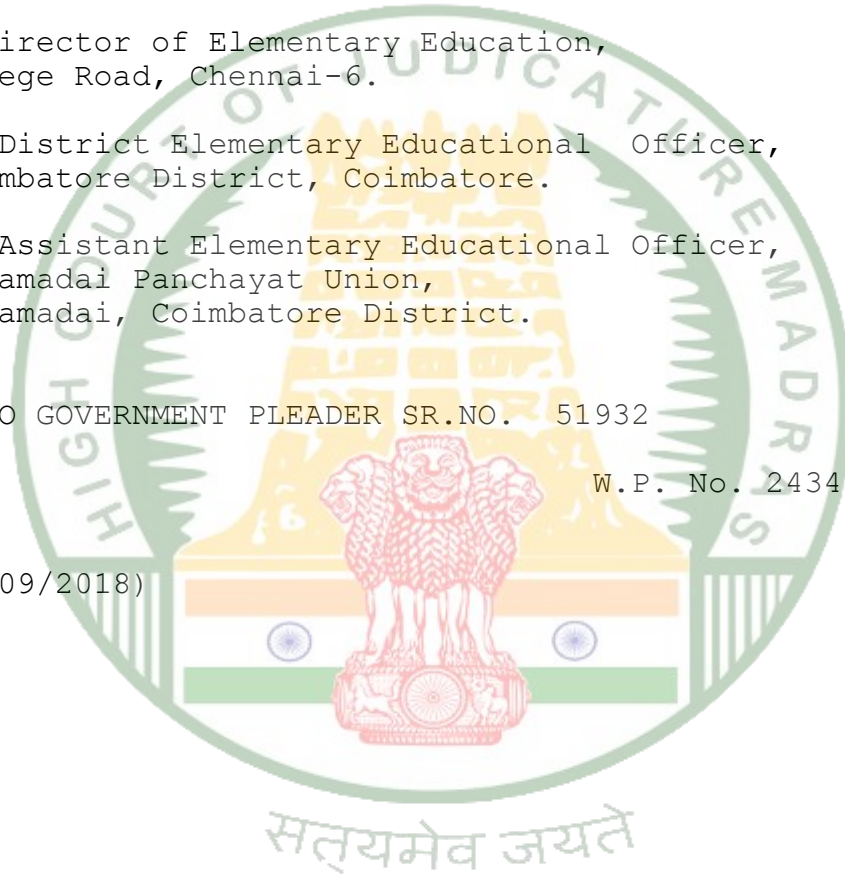
To

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+1 CC TO GOVERNMENT PLEADER SR.NO. 51932

W.P. No. 24343 of 2007

ASK(18/09/2018)



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