



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.01.2018

CORAM

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.5315 of 2011
and
M.P(MD) No.1 of 2011

T.Kaliyan Rathinam

... Petitioner

-vs-

The Additional Assistant Elementary
Educational Officer,
Chinnamanur, Theni District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the impugned order of the respondent in Ref.Na.Ka.No.272/A1/2011, dated 30.3.2011 and to quash the same.

For Petitioner : Mr.K.Appadurai
For Respondent : Mr.R.Sethuraman
Special Government Pleader

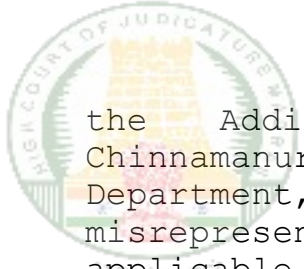
O R D E R

The order of recovery, dated 30.3.2011, issued by the respondent, is under challenge in this Writ Petition.

2.The Writ Petitioner was appointed as Secondary Grade Teacher on 19.6.1978. Further, he was promoted to the post of Primary School Headmaster on 25.6.1997 and to the post of Middle School Headmaster on 13.09.2003 and retired from service on 30.4.2008 on attaining the age of superannuation.

3.The grievance of the Writ Petitioner is that his pay was fixed as per G.O.Ms.No.207, School Education Department, dated 30.9.2008 . However, the same is sought to be recovered through the impugned order, dated 30.3.2011.The learned counsel for the Writ Petitioner states that the impugned order of recovery has been issued without issuing any show-cause notice and opportunity to the Writ Petitioner and therefore, the same is in violation of the principles of natural justice.

4.The learned Special Government Pleader appearing on behalf of the respondents made a submission that no doubt, the revision of pay and arrears were paid to the Writ Petitioner pursuant to the letter submitted by the Writ Petitioner on 23.3.2009 addressed to



the Additional Assistant Elementary Educational Officer, Chinnamanur, by misquoting the said G.O.Ms.No.207, School Education Department, dated 30.09.2008. Thus, the Writ Petitioner has misrepresented and obtained the revision of pay, which is not applicable to him. In para 5 of the Counter Statement, it is stated as under:

''5. It is humbly submitted that the Petitioner has suppressed the fact of the misrepresentation of the case in his petition, dated 23.3.2009 and claimed and encashed the arrears of pay and other allowances quietly. But the Petitioner herein is entitled for notional pay fixation of pay etc. only and that too, for the purpose of claiming the terminal benefits only. But the Petitioner has misrepresented his case and played fraud on the Officers and got the arrears of pay and allowances to the tune of Rs.3,69 lakhs for which he is not entitled. Hence the excess amount drawn and paid to the Petitioner by unfair means was ordered to be recovered as per the instructions laid down in the G.O.Ms.No.207, School Education, dated 30.09.2008.''

5. Since the respondent has categorically enumerated in his counter that it is a case of misrepresentation, this Court is of the opinion that citing misrepresentation and the reasons, a notice ought to have been issued to the Writ Petitioner and after receiving the explanations/objections, suitable orders would have been passed, but, the respondent suo-moto passed the impugned order, without providing any opportunity to the Writ Petitioner and therefore, the impugned order is in violation of principles of natural justice.

6. Accepting the above said limited grounds, the order impugned passed by the respondent in Ref.Na.Ka.No.272/A1/2011, dated 30.3.2011 is quashed and 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 the same, the Writ Petitioner is directed to submit his explanations/objections within a period of four weeks from the date of receipt of the show-cause notice and thereafter, the respondents shall consider the same on merits and on the basis of available records and pass appropriate orders within a period of 12 weeks thereafter.

7. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/



To
The Additional Assistant Elementary
Educational Officer,
Chinnamanur, Theni District.

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+1CC to Mr.K.Appadurai, Advocate, SR.No. 43411
+1CC to the Special Government Pleader SR.No.44338

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vsn
AM/KKR/SAR 4/07.02.2018/3P/4C