



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

CORAM

WEB COPY

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

W.P.(MD) No.16587 of 2013

and

M.P(MD)Nos.2,3 and 4 of 2013

P.Logamani

... Petitioner

-vs-

- 1.The Accounts Officer/Branch Officer,
Office of the Principal Accountant General,
(A&E),Tamil Nadu,
Chennai.
- 2.The District Elementary Educational Officer,
Theni District.
- 3.The Assistant Elementary Educational Officer,
Cumbum, Theni District.
- 4.The Sub-Treasury,
Office of the Sub-Treasury,
Uthamapalayam,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the respondent in the impugned order of the first respondent in proceedings No.AG(A&E)/PEN P19/1/REV 21906198/GPO, dated 26.6.2013 and the impugned order of the third respondent in R.C.No.58/A1/2013, dated 17.7.2013 and to quash the same and consequently to direct the respondents herein to disburse the death-cum- terminal benefits at Rs.7,41,840/- with interest at 7.5% p.a. From 3.8.2012, refund Rs.97,963/- towards recovery of alleged excess pay and allowance from the Petitioner, continue to pay monthly pension of the Petitioner at Rs.14,050/- to the Petitioner from July 2013 sanctioned by the first respondent vide proceedings No.P19//11906198/4/PPO No.R1906198/EDP, dated 3.8.2012 as per the revised pay scale on Selection Grade Headmaster of Primary school sanctioned by the Government with arrears of pay and pension, periodical increments and other monetary benefits accrued to her service.



for Respondents
2,3 and 4

: Mr.R.Sethuraman,
Spl.Govt.Pleader

ORDER

The order of recovery and pay of recovery is under challenge in this Writ Petition.

2.The learned counsel for the Writ Petitioner states that the scale of pay as applicable to the Writ Petitioner was fixed in accordance with the Government Orders. However, the impugned order of reduction of pay and recovery was imposed on the ground that there was an audit objection from the Office of the Accountant General. The Petitioner states that no notice or opportunity was provided to the Writ Petitioner before passing the impugned order of reduction of pay and recovery. Thus the impugned order is in violation of principles of natural justice.

3.The learned counsel for the first respondent states that the revision of pay of the Writ Petitioner was effected in gross violation of the Government Orders in force and inapplicable scale of pay was provided to the Writ Petitioner. Such fixation of pay was highly erratic and the authority knowingly granted such erroneous scale of pay to the Writ Petitioner. Thus there is no infirmity in the reduction of pay and imposing recovery. This Court is of an opinion that any order affecting the rights of a Government employee cannot be issued without providing an opportunity to the Government employee. Admittedly, no notice or opportunity was provided to the Writ Petitioner before passing the order of reduction of pay and recovery. However, the pay as applicable to the Writ Petitioner can be fixed. In other words, the errors occurred on account of wrong fixation can be corrected by the competent authority. Even that correction is to be done by giving show-cause notice to the Writ Petitioner and on receipt of explanation from the Writ Petitioner, if any erroneous pay is granted, the same can be corrected. But the excess amount if any paid, the same can not be recovered from the Writ Petitioner. There is no misrepresentation on the part of the Petitioner and the authorities competent had only fixed the scale of pay to the Writ Petitioner. This being the factum, recovery alone is to be set aside.

4.Accordingly, the order impugned passed by the first respondent in proceedings No.AG(A&E)/PEN P19/1/REV 21906198/GPO, dated 26.6.2013 is quashed in respect of recovery alone. The respondents are directed to issue show-cause notice to the Writ Petitioner in respect of reduction of scale of pay and on receipt of explanation, take a decision and fix the correct scale of pay as applicable to the Writ Petitioner. If any excess payment already paid is recovered, the same is directed to be reimbursed to the Writ Petitioner within a period of 12 weeks from the date of receipt of a copy of this order.



5. With these directions, the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (T & P)

/True copy/

Sub Assistant Registrar

To

1. The Accounts Officer/Branch Officer,
Office of the Principal Accountant General,
(A&E), Tamil Nadu,
Chennai.
2. The District Elementary Educational Officer,
Theni District.
3. The Assistant Elementary Educational Officer,
Cumbum, Theni District.
4. The Sub-Treasury,
Office of the Sub-Treasury,
Uthamapalayam,
Theni District.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.52518
+1CC TO M/S.P.GUNASEKARAN, ADVOCATE, SR NO.52617
+1CC TO M/S.K.APPADURAI, ADVOCATE, SR NO.52138

W.P.(MD) No.16587 of 2013

and

M.P(MD) Nos.2,3 and 4 of 2013

28.02.2018

vsn

MS/SKN-RSK/SAR-3/12.03.2018/3P.8C