



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P (MD) No. 2513 of 2013

and

M.P (MD) No. 1 of 2013

WEB COPY

T. Krishnan

... Petitioner

Vs

1. The District Elementary Educational Officer,
Office of the District Elementary Educational
Officer, Theni District.

2. The Assistant Elementary Educational Officer,
Office of the Assistant Elementary
Educational Officer, Periyakulam,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in ref. Na. Ka. No. 26A/1/2013, dated 4.2.2013 and quash the same and consequently direct the respondents herein to continue to pay the salary on the basis of his seniority, qualification and experience, paid to the petitioner on the date of issue of the impugned order passed by the 2nd respondent.

For Petitioner : Mr. K. Appadurai

For Respondents : Mr. M. Muthu

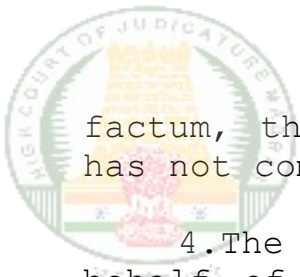
Additional Government Pleader

ORDER

The order of recovery issued by the Assistant Elementary Educational Officer, vide proceedings, dated 04.02.2013 is under challenge in this writ petition.

2. The pay of the writ petitioner was stepped up on par with his junior based on the representation submitted by the writ petitioner. Accordingly, the writ petitioner had received the revised scale of pay and arrears. However, suddenly, the order of recovery was imposed stating that the stepping up of pay of the writ petitioner on par with his junior was erroneously made and therefore, the enhanced pay was reduced and consequently, the recovery is imposed.

3. The grievance of the writ petitioner is that he had not made any misrepresentation. However, the authorities themselves have stepped up the pay of the writ petitioner and paid the revised pay in accordance with the Government Order in force. This being the



factum, the recovery cannot be imposed since the writ petitioner has not committed any fault.

4.The learned Additional Government Pleader appearing on behalf of the respondents states that based on the comparative statement submitted by the writ petitioner, the case of the writ petitioner was considered for stepping up of the pay and subsequently, it was identified that the fixation done in favour of the writ petitioner was erroneous. Thus, the authorities competent had issued the revised scale of pay as applicable to the writ petitioner and passed an order of recovery to recover the excess amount made.

5.The learned counsel for the petitioner states that the order of recovery was issued without issuing show cause notice and opportunity to the writ petitioner and therefore, the same is in violation of principles of natural justice. This apart, there was no misrepresentation or otherwise on the part of the writ petitioner at the time of claiming the stepping up of pay on par with his junior. Thus, the impugned order is untenable.

6.This Court is of an opinion that the authorities are empowered to correct the mistakes, if any, occurred on account of wrong fixation. In other words, the errors can be corrected at any point of time. However, imposing recovery cannot be done without providing an opportunity to the writ petitioner. In the present case, the respondents are unable to establish that show notice was issued to the writ petitioner.

7.This being the factum, this Court is of an opinion that the recovery portion of the order to be set aside and the authorities competent is at liberty to correct the scale of pay of the writ petitioner in accordance with the Government Orders and the pay Rules in force.

8. In this view of the matter, the order passed by the second respondent vide proceedings in Na.Ka.No.26/A/1/2013, dated 04.02.2013 is quashed in respect of recovery alone and in respect of re-fixation of pay, the respondents are at liberty to issue show cause notice to the writ petitioner and after receiving explanations/objections from the writ petitioner take a decision and pass orders in accordance with law.

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

Sd/-

Assistant Registrar(crl side)



To

1. The District Elementary Educational Officer,
Office of the District Elementary Educational
Officer, Theni District.

2. The Assistant Elementary Educational Officer,
Office of the Assistant Elementary
Educational Officer, Periyakulam,
Theni District.

+1cc to Spl.Government Pleader Sr.No.50945

AM

VB/SV/MMS/SAR4/07/03/2018/3P/4C

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