

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION (TR) No. 3221 OF 2017**

**ORDER:**

This Writ Petition is filed assailing the impugned proceedings Rc.No.2756/E1/2014, dated 12.12.2014 issued by the 1<sup>st</sup> respondent as illegal and arbitrary and consequently to declare that the revision of pay scales vide proceedings No.37/SPPS/2011, dated 03.01.2012 issued by the 2<sup>nd</sup> respondent are valid and the petitioner to entitled to draw the pay scales with all consequential benefits.

2. It is the case of the petitioner that he was selected and appointed as a Craft Teacher after due process of selection vide proceedings Rc.No.E1/47/84, dated 14.02.1986 in the scale of Rs.530-850 by the 1<sup>st</sup> respondent. That the post of Craft Instructor is governed by A.P. Education Subordinate Rules at the time of his appointment; that there was a recruitment for specialized categories like Craft Instructors, Sewing Dance etc., but however the said recruitment had been stopped for the last several D.S.C since 1996 to the knowledge of the petitioner. Since there was no promotion post to the above categories of teachers under the Education Subordinate Service Rules, the teachers like the petitioner who were appointed including other S.G.Ts were given special grade scale on completion of 8 years of service.

Accordingly, the petitioner had been awarded during the year 1994 the scale of Rs.2075-4270 with effect from 15.02.1994 on completion of 8 years of service in Craft Instructor by the 1<sup>st</sup> respondent. Thereafter, petitioner also further granted S.A.P.P Scale-1 with effect from 15.02.2002 in the scale of Rs.4850-10250 under Grade-XIV under Revised Pay Scales 1999 by the 1<sup>st</sup> respondent. That whenever there is a stagnation for further promotion or want of vacancies due to stagnation the Government has issued various G.Os for awarding Special Grade Scales on completion of 8/16 and 24 years of service like G.O.Ms.No.311 F & P dated 20.08.1993 and also G.O.(P) No.114 F & P dated 11.08.1999. Accordingly, the pay of the petitioner had been fixed in S.A.P.P Scale-I with effect from 15.02.2002 under F.R.22(a)(i) by the Headmaster concerned vide proceedings dated 01.10.2005 and the said pay had been regulated in the revised pay scale of 2005 and also in the P.R.C of 2010 of Rs.14860-39540 with effect from 1.7.2008 after releasing the admissible normal and annual grade increments accrued to the petitioner from time to time. That the government also modified the Automatic Advancement Scheme from 6, 12, 18 and 24 years of service from the exiting provision of 8/16/24 years of service under Advancement Scheme vide G.O.Ms.No.96, dated 20.05.2011 and based upon the above, the petitioner was given Special Adhoc Promotion Scale with

effect from 1.2.2010 in the existing scale of Rs.14860-39540 by allowing one increment on completion of 18 years of service in the category of Craft Instructor by the Headmaster, Government High School, Saptagiri Colony, Karimnagar vide proceedings dated 03.01.2012 which is called as S.A.P.P.Scale-1B and the said action of the Headmaster is as per G.O.Ms.No.40, there is no illegality or irregularity in pay fixation of the petitioner. As such, the impugned order of the 1<sup>st</sup> respondent dated 12.12.2014 is illegal and arbitrary, since there is no enquiry conducted nor any notice was given to the petitioner regarding fixation and also to recover the amount even without specifying the amount by canceling the Automatic Advancement Scale given to the applicant.

3. Counter affidavit is filed by the 1<sup>st</sup> respondent denying the averments in the affidavit filed in support of the Writ Petition stating that as per G.O.(P) No.241 Finance (PC-II) Department, dated 28.09.2005, every person has to pass any Degree with B.Ed and also Departmental Tests for award of Special Promotion Post Scale-II and the Government also issued clarification on awarding the Special Promotion Post Scale-I vide Govt.Memo No.661/12/PC-II/2006, dated 01.03.2006. That the Government also modified Automatic Advancement Scheme vide G.O.Ms.No.96, dated 20.05.2011 stating that an employee on completion of 18 years service in a particular post, shall be allowed one increment in the

Special Promotion Post Scale-I-A or Special Adhoc Promotion Post Scale 1-A as the case may be, which shall be called Special Promotion Post Scale 1-B/Special Adhoc Promotion Post Scale I-B. That an employee, on completion of 24 years of service in a particular post, shall be placed in the scale of the post applicable to the second level promotion post to the original post held by him. This is subject to the condition that he is fully qualified to be promoted to such promotion post as prescribed in service rules and also that such post should belong to the regular line and not outside the regular line. This scale shall be called Special Promotion Post Scale-II. In other words, such of the employees who have put in 24 years of service in one post without getting any promotion, shall be considered for appointment to the Special Promotion Post Scale-II. That as per the above orders, the petitioner is not eligible for award of 12 years scale also since he is not having requisite qualifications for further promotion of School Assistant. The petitioner has got SPP Scale-I for 16 years in pre-revised pay scales to RPS 2010, as such, petitioner is not eligible for award of 18 years scale and 24 years scale. Therefore, he is liable for recovery of excess amount drawn by him for irregular pay fixation.

4. Heard Sri Ramgopal Rao, learned counsel for the petitioner and learned Assistant Government Pleader for Services.

5. Learned counsel for the petitioner submits that the petitioner falls under Sub-clause (b) of Clause (vi) of Clause 7 and that there cannot be any recovery since the respondents wrongly fixed pay scales. In support of his contention, he relied on the judgment of Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih (White Washer)** in Civil Appeal No.11527 of 2014, dated 18.12.2014.

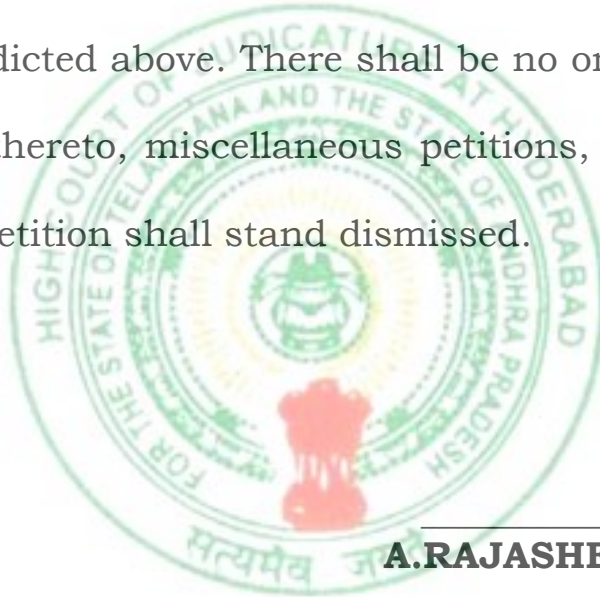
6. On the other hand, learned Assistant Government Pleader for Services submits that the petitioner case falls under Clause 7 (vi) (b) in G.O.Ms.No.96, Finance (Pay Commission-II) Department, dated 20.05.2011.

7. In this case, it is to be seen that before issuing the impugned order for recovery of amounts paid in excess to the petitioner, no notice was issued to the petitioner. When wrong fixation was done by the respondents and when they sought to recover the same, they ought to have issued notice to the petitioner before issuing impugned order, which is in violation of principles of natural justice. Admittedly, petitioner retired in the year 2016 and basing on the impugned order dated 12.12.2014 of the 1<sup>st</sup> respondent, the respondents are not releasing the pensionary benefits to the petitioner.

In view of above facts and circumstances, since the impugned order is without issuing any notice to the petitioner, which is in violation of principles of natural

justice, the same is set aside. However, the respondents shall take action after issuing notice to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. It is open for the petitioner to file explanation to the said notice, within two weeks thereafter. The respondents are directed to pass appropriate orders within a period of six weeks and take a decision for fixing the pension and also pay the pensionary benefits within two weeks thereafter.

With the above direction, this Writ Petition is allowed to the extent indicted above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed.



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**A.RAJASHEKER REDDY,J**

19-04-2018

kvs

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