

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2019

CORAM
THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.15066 of 2009

P.Adhi Gurusamy

...Petitioner

Versus

1. The Government of Tamil Nadu
rep. by the Secretary to the Government,
School Education Department,
Fort St. George, Chennai-9.
2. The Accountant General
(Accounts and Entitlements),
Tamil Nadu, Chennai-18.
3. The Assistant Elementary Educational
Officer, Manikandam,
Trichy District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in PEN 17/II/11700027/RN/09-10/FINAL REPLY dated Nil and quash the same and direct the respondents to fix the petitioner's pay in the Selection Grade and Special Grade of Primary School Headmaster treating the petitioner as having joined duty in Anthanallur Panchayat Union on 05.06.1989 as Primary School Headmaster and counting the petitioner's service rendered as Primary School Headmaster on that basis and grant all consequential benefits to the petitioner including revision of pension.

For Petitioner : Mr.P.Mohan Raj

For Respondents : Mr.K.Karthikeyan,
1 and 3 Government Advocate

For 2nd respondent : Mr.T.Ravikumar,
Standing Counsel

O R D E R

The writ petition has been filed questioning the correctness of the impugned order of the 2nd respondent, namely, the Accountant General (Accounts and Entitlements), Tamil Nadu, Chennai-18. in PEN 17/II/11700027/RN/09-10/FINAL REPLY dated

'Nil', to quash the same and for further direction, directing the respondents to fix the petitioner's pay in the Selection Grade and Special Grade of Primary School Headmaster treating the petitioner as having joined duty in Anthanallur Panchayat Union on 05.06.1989 as Primary School Headmaster and count his service rendered as Primary School Headmaster on that basis and grant all consequential benefits to him including revision of pension.

2. The impugned order has been passed by the Accountant General (Accounts and Entitlements), Tamil Nadu, Chennai-18 holding that the petitioner is not eligible for the revised fixation of pay as per G.O.Ms.No.202, School Education (G.2) Department, dated 24.09.2008 and therefore, excess pay paid if any, the same was directed to be recovered.

3. Learned Counsel appearing for the petitioner submitted that initially, the petitioner was appointed as Primary School Headmaster on 04.08.1964. Thereafter, he continued as Headmaster till 1989. In the year 1989, when he was working as Headmaster in Vilathikulam Panchayat Union, Thoothukudi District, he made a request for transfer to Trichy District and his request was also accepted and he was transferred from Vilathikulam Panchayat Union, Thoothukudi District to Anthanallur Panchayat Union, Trichy District on 05.06.1989. But the petitioner was not posted as Headmaster for want of vacancy in Anthanallur Panchayat Union and posted only as a Secondary Grade Teacher since at that time, the scale of pay for the posts of Primary School Headmaster and Secondary Grade Teacher were same. The petitioner also joined duty as Secondary Grade Teacher in Anthanallur Panchayat Union.

4. The learned Counsel for the petitioner further submitted that while so, the Government issued G.O.Ms.No.666, Finance (Pay Cell) Department, dated 27.6.1989 granting a higher scale of pay for the post of Primary School Headmaster. In continuation of the same, the Government of Tamil Nadu also issued a Letter No.60467/S2/94-4 dated 14.12.1994 directing that in case of request transfers from one block to another block, the concerned teachers should be posted as junior most in the category in which they belong. Accordingly, the seniority of the petitioner was also fixed in the category of Secondary Grade Teacher in Anthanallur Panchayat Union to which he was transferred even though he was working as a Primary School Headmaster at the time of transfer. Hence, the petitioner submitted several representations to the authorities requesting them to place him at the bottom of the seniority list of the Primary School Headmasters of Anthanallur Panchayat Union and to fix his pay in the scale of pay of Primary School Headmaster w.e.f. 1.6.1988. But, no orders were passed. Therefore, the petitioner, approached the Tamil Nadu Administrative Tribunal by

filing O.A.No.7246/1995 seeking a direction to assign correct seniority list of Anthanallur Panchayat Union as on the date of his transfer to the said Panchayat Union and post him as Primary School Headmaster in accordance with such seniority and grant him all consequential benefits.

5. The learned Counsel for the petitioner also submitted that in the meantime, several litigations came to be raised by the affected teachers. Ultimately, the Tamil Nadu Administrative Tribunal passed orders on 13.2.2002 directing that the teachers who had worked as Primary School Headmasters prior to 1.6.1988 and then posted as Secondary Grade Teachers on request transfer for want of vacancy in the post of Headmasters with effect from their date of initial appointment as headmaster, their pay should be fixed accordingly. The order of the Tribunal was confirmed by this Court in W.P.No.43010/2006 and thereafter, the Government of Tamil Nadu issued orders in G.O.Ms.No.202, School Education (G.2) Department, dated 24.09.2008 directing the teachers who had worked as Primary School Headmasters prior to 1.6.1988 and posted as Secondary Grade Teacher on request transfer to another block should be considered as having joined duty as Primary School Headmasters in the new block and they should be granted selection grade/special grade by counting the service rendered prior to 1.6.1988 and that such benefits should be given to all, irrespective of whether they had filed cases or not. Therefore, when it is an admitted case of the petitioner and even as per the counter affidavits filed by the 3rd respondent that the petitioner has served as a Primary School Headmaster even prior to 01.06.1988, the learned Counsel for the petitioner submitted that the question to be answered by the respondents is as to whether the petitioner is entitled to get the benefits of G.O.Ms.No.666 dated 27.6.1989 and G.O.Ms.No.202 dated 24.09.2008 or not.

6. Referring to paragraph No. 3 of the counter affidavit filed by the 2nd respondent, the learned Counsel for the petitioner submitted that when it is made absolutely clear that a teacher who served as Primary School Headmaster prior to 1.6.88 and subsequently, transferred and posted to another Panchayat Union as Headmaster or Secondary Grade Assistant either for want of vacancy or for their own request, he should be given the benefit of fixation of salary of Headmaster of Primary School, this has not been done. Having issued G.O.Ms.No.202, School Education (G.2) Department, dated 24.09.2008 granting benefits to all persons like the petitioner, denying the same only to the petitioner is unreasonable, unjustifiable and arbitrary. Therefore, the impugned order of the 2nd respondent is liable to be quashed by imposing costs.

7. A detailed separate counter affidavit has been filed by the 2nd and 3rd respondents.

8. The Counter Affidavit filed by the 2nd respondent also clearly admits the case of the petitioner that the petitioner has served as Special Grade Secondary Grade Assistant in Panchayat Union Middle School, K.K.Nagar, Manikandam Range, Trichy and retired on superannuation on 31.3.1999. The 3rd respondent, namely, the Assistant Elementary Educational Officer, Manikandam, Trichy District, also admits the case of the petitioner that the petitioner, namely, P.Adhi Gurusamy, has applied for transfer from Thoothukudi District to Andanallur Panchayat Union of Trichy District and only on his own request, he was transferred from Thoothukudi District, Vilathikulam Range to Andanallur Panchayat Union of Trichy District. Moreover, even the counter affidavit filed by the 2nd respondent, the Accountant General (Accounts and Entitlements), Tamil Nadu, Chennai, also clearly shows that the extension of benefits of G.O.Ms.No.202 should be given only by the respondents 1 and 3. But a peculiar stand was taken in paragraph 3 of the counter affidavit filed by the Accountant General. It is useful to extract the same here under for proper perusal:

''3. It is submitted that G.O.Ms.No.202, dated 24.9.2008 specifically states that those who have served as Primary School Headmaster and transferred to another Panchayat Union as Secondary Grade Assistant prior to 1.6.88 will be treated as Primary School Headmaster from the date of their joining as Secondary Grade Assistant in the Panchayat Union to which they have been transferred. In the case of the petitioner, he was not transferred as Secondary Grade Assistant prior to 1.6.88 but only from 5.6.89, and he has never repromoted as Primary School Headmaster till his retirement. Thus the petitioner becomes ineligible for revision of pensionary benefits in terms of G.O.202.''

A reading of the above shows that as per G.O.Ms.No.202 dated 24.9.2008 all those teachers who have served as Primary School Headmaster and transferred to another Panchayat Union as Secondary Grade Assistant prior to 1.6.88 alone will be treated as Primary School Headmaster from the date of their joining as Secondary Grade Assistant in the Panchayat Union to which they have been transferred. It is absolutely incorrect. The reason being that a reading of last paragraph of G.O.Ms.No.202 dated 24.09.2008 says that any Primary School Headmaster, promoted prior to 01.06.1988, subsequently, transferred from one Panchayat Union to another, even as a Secondary Grade Teacher,

due to want of vacancy or due to the willingness given by the concerned teacher, he is entitled to get the pay revised on par with the scale of pay of the Primary School Headmaster. This has been completely overlooked by the 2nd respondent while passing the impugned order of recovery, without understanding the contents of the said Government Order, as a result, the petitioner has been put to face great prejudice.

9. Mr.T.Ravi Kumar, learned Standing Counsel for the 2nd respondent submitted that based on the Revised Proposal of the 3rd respondent only, the 2nd respondent has passed the impugned order of recovery, therefore, there is no fault on the part of the 2nd respondent.

10. However, Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents 1 and 3 submitted that there is no fault committed by the respondents 1 and 3 and the 2nd respondent only without properly understanding the G.O.Ms.No.202 dated 24.09.2008, passed the impugned order of recovery.

11. Though several thousands of cases have been filed seeking the benefit of G.O.Ms.No.202 dated 24.09.2008 and the respondents, following the said Government Order, it appears that in the present case, only the Accountant General (Accounts and Entitlements) has misunderstood the Government Order and was not even willing to accept the proposal sent by the respondents 1 and 3. Therefore, while allowing the writ petition by setting aside the impugned order passed by the 2nd respondent dated 'Nil', this Court is constrained to impose a cost of Rs.20,000/- (Rupees Twenty Thousand Only) payable by the 2nd respondent, namely, Accountant General (Accounts & Entitlements), Tamil Nadu, Chennai-18 to the Government Treasury, within a period of four weeks from the date of receipt of a copy of this Order. It is made clear that the cost can be recovered from the Officer who passed the impugned order of recovery dated 'Nil'.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.

2.The Accountant General
(Accounts and Entitlements),
Tamil Nadu, Chennai-18.

3.The Assistant Elementary Educational Officer,
Manikandam,
Trichy District.

+2ccs to Mr.T.Ravi Kumar, Advocate, S.R.No.15067
+1cc to Mr.P.Rajendran, Advocate, S.R.No.15446
+1cc to the Government Pleader, S.R.No.15576

W.P.No.15066/2009

AK (CO)

RRS (09/04/2019)



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