

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.19966 of 2008
and M.P.No.2 of 2008

Ramraj

.. Petitioner

Vs.

1.District Adi Dravidar and Tribal
Welfare Office
Collectorate, Coimbatore-18.

2.The Special Tahsildar
Adi Dravidar and Tribal Welfare Office
Balasundaram road
Coimbatore-18.

3.Adi Dravidar College Boys Hostel (New)
Balasundaram road
Coimbatore-18.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records of the 1st respondent in his order dated 31.07.2008 made in Na.Ka.No.2363/2008/Kal and quash the same.

For Petitioner : Mr.S.Mukunth

For R1 and R2 : Mr.R.S.Selvam
Government Advocate

For R3 : No appearance

WEB COPY
O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for the records of the 1st respondent in his order dated 31.07.2008 made in Na.Ka.No.2363/2008/Kal and quash the same.

2.According to the petitioner, he was appointed on 12.11.1997 as Secondary Grade Teacher by the 1st respondent and his services were regularised by the 1st respondent by the

proceedings dated 03.03.2000 with effect from 24.11.1997. He was promoted as B.T. Assistant voluntarily by the 1st respondent by order dated 09.03.2000. Subsequently, by the order dated 14.03.2000, the petitioner was relieved from Kandiyar Koil Welfare School and was asked to report for duty before the Adi Dravidar Government Boys Hostel, Singanallur, Coimbatore. The petitioner joined duty on 15.03.2000, he was performing the duties of B.T. Assistant and drawing salary as B.T. Assistant. On 12.03.2001, the 1st respondent issued pay fixation to the petitioner. By the order dated 31.07.2008, the 1st respondent directed the respondents 2 and 3 to recover a sum of Rs.1,43,285/- from the salary of the petitioner in monthly instalments of Rs.4,000/- commencing from August 2008 to November 2010 and thereafter, Rs.3,285/- from December 2010 till the entire dues are recovered. The said order was passed based on the audit report conducted during the financial year 2006-2008.

3.The learned counsel appearing for the petitioner contended that the said order was passed without any show cause notice and without hearing the petitioner as well as similarly placed persons. The 1st respondent promoted the petitioner as B.T. Assistant even without any request from the petitioner for such promotion. The petitioner from 14.03.2000, the date of promotion, is performing the functions of B.T. Assistant and drawing the salary as B.T. Assistant. The impugned order passed by the 1st respondent is arbitrary, illegal and in violation of Article 14 of the Constitution of India and prayed for setting aside the impugned order of the 1st respondent. In support of his contention, he relied on the judgment of the Hon'ble Apex Court reported in 2015 (4) SCC 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others);

4.The respondents have not filed any counter affidavit. The learned Government Advocate appearing for the respondents 1 and 2 contended that at the time of auditing by the Auditor Directorate, Adi Dravidar Welfare Department during the year 2006-2008, it was found that the petitioner was appointed with some conditions that he should not be promoted as B.T. Assistant and the same was accepted by the petitioner. Contrary to the said condition, he was promoted as B.T. Assistant. In view of the same, as per the audit objection, the impugned order was issued, the same is valid and prayed for dismissal of the writ petition.

5.Though notice was served on the 3rd respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

6.Heard the learned counsel for the petitioner as well as

the learned Government Advocate for the respondents 1 and 2 and perused the materials available on record.

7. From the materials available on record, it is seen that the petitioner was promoted as B.T. Assistant by the order dated 09.03.2000. It is the contention of the learned counsel for the petitioner that the said promotion was given to the petitioner voluntarily by the 1st respondent without any request being made by the petitioner. According to the learned counsel for the petitioner, 1st respondent fixed the scale of pay of the petitioner as B.T. Assistant on 12.03.2001. The impugned order was passed on 31.07.2008 after nine years of promotion of the petitioner and after seven years of fixation of scale of pay. The contention of the learned counsel for the petitioner that the petitioner was promoted without any request being made by him and he is discharging the duties of the B.T. Assistant, is not disputed by the respondents.

8. The grievance of the petitioner is that the 1st respondent voluntarily promoted the petitioner as B.T. Assistant on 09.03.2000 and is extracting the work from the petitioner as B.T. Assistant. Without any notice and without hearing the petitioner, after eight years, the 1st respondent is seeking for recovery of Rs.1,43,285/- in monthly instalments from the salary of the petitioner. The issue of recovery was considered by the Hon'ble Apex Court in the judgment reported in 2015 (4) SCC 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others). After considering various judgments of this issue, in para-18, the Hon'ble Apex Court has held as follows:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. "

The situations III and IV mentioned in para-18 in the judgment referred to above are applicable to the facts and circumstances of the present case.

9. In view of the above facts, the impugned order of the 1st respondent is liable to be set aside and it is hereby set aside. In the result, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kj

To

1. District Adi Dravidar and Tribal Welfare Office
Collectorate, Coimbatore-18.

2. The Special Tahsildar
Adi Dravidar and Tribal Welfare Office
Balasundaram road
Coimbatore-18.

3. Adi Dravidar College Boys Hostel (New)
Balasundaram road, Coimbatore-18.

+1cc to Mr. Sarvabhauman Associates, Advocate, S.R.No. 49618
+1cc to the Government Pleader, S.R.No. 50614

W.P.No.19966 of 2008
and M.P.No.2 of 2008

VG II (CO)
GN(26/07/2019)