

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.29363 of 2004  
and  
WP.MP.No.35648 of 2004

P.S.N.Narayanasamy

...Petitioner

Vs

1. The District Elementary Educational Officer,  
Coimbatore District.
  2. The Assistant Elementary Educational Officer,  
Karamadai Panchayat Union,  
Mettupalayam Taluk,  
Coimbatore District.
  3. The Branch Officer,  
The Accountant General (A&E),  
Teynampet, Chennai - 18.
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue an order or writ or any other appropriate order particularly a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in relation into AG(A&E)/PENP20/2/N16-373/AR/2001-2002 dated 29.06.2001 and quash the same and issue a consequential direction to the respondents to fix the pay of petitioner at Rs.9100/- in the scale of pay of Rs.5900-9900 with effect from 01.01.1996 and then fix last pay drawn at Rs.11,025/- as on 30.06.2001 and fixed the pensionary benefits and to release the alleged excess sum recovered from the amount of gratuity.

For Petitioner : Mr.R.Saseetharan

For Respondents: Mr.K.Rajendra Prasad, AGP  
for R1 and R2

Mr.T.Ravikumar  
for R3

## O R D E R

The petitioner's pay was fixed by applying Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989. The petitioner herein had retired from service on 30.06.2001. In the audit objections raised by the 3rd respondent herein, it was stated that the petitioner's salary has to be fixed as per G.O.Ms.No.57 as on 01.01.1996 at Rs.8300/-, but the pay fixed at Rs.9100/- is in excess and therefore ordered for recovery from the Death cum Retirement Gratuity. The said order is under challenge in the present Writ Petition.

2. The learned counsel for the petitioner submitted that in view of the stand taken by the respondents herein that the petitioner is entitled for the benefits of Rule 4(3) and by relying upon the decision of the Hon'ble Apex Court in 2015 (4) SCC 334 in the case of State of Punjab and others vs Rafiq Masih (White Washter) and others, he would submit that the recovery order is illegal and requires to be set aside.

3. The learned Additional Government Pleader, on the other hand, reiterated the averments made in the counter affidavit and submitted that the petitioner herein was given one increment benefit on 13.07.1993 for selection grate in Head Master Middle School post and one more increment on 14.03.1998, which is incorrect and therefore, this one increment benefit from 14.03.1998 is to be recovered.

4. I have given careful consideration to the submissions made by the respective counsels.

5. As rightly pointed out by the learned counsel for the petitioner, the counter affidavit dated 28.10.2006 by the 3rd respondent admits that the petitioner herein is entitled to the benefits of Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989. In view of such an admission, the basis on which the impugned order came to be passed itself goes. However, the said counter affidavit also states that one increment benefit extended to the petitioner from 14.03.1998 till the date of retirement, requires to be recovered.

6. The Hon'ble Apex Court in its decision reported in 2015 (4) SCC 334, had reiterated the recovery orders by observing the hardship that could be caused to Government employees, where payments have been mistakenly made by the employer in exercise of their entitlement. Such an exemption was extended to the retired Government employees also. By applying the ratio laid down in the aforesaid decision, I am of the view that the statement in the counter affidavit that they are entitled to recover one increment from 14.03.1998 till petitioner's retirement, cannot be maintained.

7. For all the foregoing reasons, the Writ Petition deserves to be allowed. Accordingly, the order passed in AG (A&E)/PENP20/2/N16-373/AR/2001-2002 dated 29.06.2001 on the file of the Principal Accountant General (A&E), is set aside and the present Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

hvk

To

1. The District Elementary Educational Officer,  
Coimbatore District.
2. The Assistant Elementary Educational Officer,  
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Mettupalayam Taluk,  
Coimbatore District.
3. The Branch Officer,  
The Accountant General (A&E),  
Teynampet, Chennai - 18.

+1cc to Mr.T.Ravikumar, Advocate SR.No.12673

सत्यमेव जयते

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and

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RR (CO)  
GMY (11/03/2019)

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