

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE SUBRAMONIUM PRASAD

WP.Nos.6584 to 6586 of 2010

M.Periyasami ...Petitioner in WP.6584/2010
Eswaran M @ C.Arthanareeswaran ...Petitioner in WP.6585/2010
K.Krishnakumar ...Petitioner in WP.6586/2010

-Vs-

- 1.The Accountant General,
(Accounts & Entitlement)
O/o. The Accountant General (A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.
- 2.The Director of School Education,
College Road,
Chennai-600 006. ...Respondents 1 & 2 in all WPs.
- 3.The District Educational Officer,
Erode. ... 3rd Respondent in WP.6584/2010
- 4.The District Educational Officer,
Gobichettipalayam. ... 3rd Respondent in WP.6585/2010

WP.6584/2010:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records issued by the first respondent in No.AG (A&E)/PEN P25/4/P101-1402/AR/2007-2008/26 dated 03.03.2008 and quash the same in so far as reducing one increment from 20.02.2003 and the consequent fixation of pension and other benefits and to direct the respondents to sanction full pension and other benefits on the basis of scale of pay last drawn by the petitioner on his retirement with arrears with interest.

WP.6585/2010:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified

Mandamus, to call for the records issued by the first respondent in No.AG (A&E)/PEN P25/3/E9-404/RTD/2008-2009/114 dated 14.07.2008 and the consequential order in P25/2/E16-845/REV/2008-2009/8935 dated 11.12.2008 and quash the same in so far as reducing one increment from 09.12.2002 and to sanction increments towards Selection Grade scale of pay with the consequent fixation of pension and other benefits and to direct the respondents to sanction full pension and other benefits on the basis of scale of pay last drawn by the petitioner on his retirement with arrears with interest.

WP.6586/2010:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records issued by the first respondent in No.AG (A&E)/PEN P10/3/K138-1404/RTD/2008-2009/26 dated 04.05.2009 and quash the same in so far as reducing one increment from 03.12.2002 and the consequent fixation of pension and other benefits and to direct the respondents to sanction full pension and other benefits on the basis of scale of pay last drawn by the petitioner on his retirement with arrears with interest.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.P.Manorajan
for R1 in all WPs.
Mr.P.Raja
GA for R2 & R3

COMMON ORDER

This common order dispose of three writ petitions viz., WP Nos.6584, 6585 and 6586 of 2010.

2. The petitioners in all the three writ petitions were B.T. Assistants in School Education Department through Tamil Nadu Public Service Commission. They were later promoted as P.G. Assistant. They were then appointed to the post of Headmaster of High School by the Director of School Education, Chennai under various proceedings. On being appointed as Headmaster, the petitioners were given an increment. The petitioners reached their superannuation. On attaining the age of superannuation, the petitioners' pay was to be refixed for the purposes of promotion. The impugned order states that the pay scale fixation done on 20.02.2003 on promotion as Headmaster is not in order since the pay scale applicable to P.G. Assistant and Headmaster is identical. The excess pay and allowances, which were given to the petitioners, who are appointed as

Headmaster from P.G. Assistants were sought to be recovered. There were three more identical cases as the petitioners filed in WP Nos.18188 to 18190 of 2009. This Court, by an order dated 30.10.2009, quashed the identical orders, which were passed for recovery of excess amount. The learned Single Judge, in that case, placed reliance on judgment of the Hon'ble Supreme Court in Syed Abdul Qadir and others Vs. State of Bihar and others reported in [(2009) 3 SCC 475]. The Hon'ble Supreme Court in the said case observed that when excess amount is paid to teachers not because of any misrepresentation or fraud on their part and the teachers had no knowledge that the amount was being paid to them was more than what they are entitled to, then it would not be proper for the department to recover the money from the teachers. The Hon'ble Supreme Court, therefore, directed that no recovery of the excess amount, that has been paid to the teachers, be made, irrespective of the fact whether they have moved this Court or not. In applying the said principle, the learned Single Judge allowed the writ petition. The said order was challenged before the Hon'ble Division Bench in WA.Nos.2491 to 2493 of 2010. The learned Division Bench, by an order dated 24.11.2017, dismissed the appeals by holding hereunder:-

"6. The appellant has no case that the employees misrepresented the facts before the employer and got their pay fixed. There was no contribution on the part of the employees in the matter of fixation of pay. In fact the employer has not taken any action for refixation of the pension of the concerned employees. It was only after the retirement of the employees on attaining the age of superannuation, the appellant initiated action and that too, when the pension papers were sent for approval. There is no question of re-fixing the pay long after the retirement of the employee. This aspect was considered by the learned single Judge and the impugned proceedings were rightly quashed. We do not find any error or illegality in the orders warranting interference."

3. It is not disputed that the petitioner has identically situated to the petitioner in WP.Nos.18188 to 18190 of 2009. This Court is therefore bound by the finding of the Division Bench, unless the same is set aside by the Hon'ble Supreme Court.

4. In the result, these writ petitions are allowed. It is needless to say the order of recovery is set aside. The order of the learned Single Judge for calculating the pension based on the scale of pay on the petitioner through retirement is to be made. The learned counsel for the petitioner is not pressing

for interest on any amount that will be paid to them, because that is found due to them on the basis of decision of the Division Bench. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The Accountant General,
(Accounts & Entitlement)
O/o. The Accountant General (A & E) Tamil Nadu,
No.361, Anna Salai,
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- 2.The Director of School Education,
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- 3.The District Educational Officer,
Erode.
- 4.The District Educational Officer,
Gobichettipalayam.

+1 cc to The Government Pleader Sr.No.78125

AKM/30.10.19/4P-6C /

WP.Nos.6584 to 6586 of 2010

सत्यमेव जयते

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