

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.8791 of 2018

and

W.M.P.Nos.10662 & 10663 of 2018

***E.Vijayalakshmi**

... Petitioner

Vs

1.The Secretary to Government,
Department of School Education,
Fort St. George,
Chennai - 600 009.

2.The Director,
Directorate of Elementary Education,
DPI Campus,
College Road, Chennai.

3.The District Elementary Educational Officer,
Kancheepuram District,
Kancheepuram.

4.The Assistant Elementary Education Officer,
Illathur Panchayat Union,
Povunjur,
Kancheepuram District,
Kancheepuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records of the 4th respondent pertaining to his proceedings in Na.Ka.No.16/A2/2017 and quash the order dated 19.03.2018 and consequently direct the respondents to continue to pay the salary of the petitioner along with 2 increments as it was sanctioned on 11.07.2012 and also to consider the name of the petitioner for appropriate pay revision as per G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

For Petitioner

: Mr.A.Vinothraj

For Respondents

: Mrs.P.Kavitha

Government Advocate

ORDER

The prayer sought for in this writ petition is to quash the proceedings of the fourth respondent in Na.Ka.No.16/A2/2017, dated 19.03.2018 and consequently, direct the respondents to continue to pay the salary of the petitioner along with 2 increments, which was sanctioned on 11.07.2012 and also to consider the name of the petitioner for appropriate pay revision, as per G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017.

2.The case of the petitioner is that by considering her educational qualifications and by following the due process of selection, the then District Primary Educational Officer, Chengalpet M.G.R.District, by his order dated 28.09.1996, appointed the petitioner as Secondary Grade Teacher. Subsequently, she got various promotions and now, is working as Headmistress at Sekkanakuppam Panchayat Union Middle School, Kancheepuram District. Whiles, the fourth respondent, without issuing any notice to the petitioner, issued the impugned order dated 19.03.2018, directing her to deposit a sum of Rs.1,85,466/-, being the amount paid to her as incentive increment for the period from 01.07.2012 to 31.12.2017, failing which, her name would not be considered for pay revision, as per the 7th pay commission recommendations. Aggrieved over the same, the petitioner is before this Court.

3.Upon notice, the fourth respondent filed a detailed counter affidavit, inter alia stating at paragraph 5, as follows:

"5....it is submitted that the petitioner was promoted as B.T. Middle School Headmaster on the basis of B.Lit (Tamil) qualification, eventhough B.Ed degree is one of the prescribed qualification for promotion as B.T.Middle School Headmaster. It is submitted that the petitioner has made wrong interpretation before the fourth respondent and got the incentive increment for B.Ed degree with effect from 11.7.2012. It is submitted that the petitioner has drawn a sum of Rs.1,85,466/- by way of irregular incentive increment. Hence, the incentive increment for B.Ed degree already granted to the petitioner was cancelled and consequently, the petitioner was directed to remit back the excess pay and allowances drawn."

4.The learned counsel for the petitioner submitted that the fourth respondent, after considering the various Government Orders on the subject, had sanctioned two incentives for acquiring M.A. and B.Ed. qualifications and accordingly, four increments were awarded to the petitioner and pay scale was duly revised and arrears of pay as per the said revision was paid from 01.07.2012. The learned counsel further submitted that without issuing any notice or without providing any opportunity of personal hearing to the petitioner, passed the impugned order dated 19.03.2018, directing the petitioner to refund the incentive increment by way of deposit, which was alleged to have been wrongly paid to her and hence, the same is arbitrary, illegal and violative of the principles of natural justice.

5.Reiterating the averments made in the counter affidavit filed by the fourth respondent, the learned Government Advocate appearing for the respondents made her submissions, supporting the order impugned herein. According to the learned Government Advocate, the incentive increment was sanctioned only on the basis of wrong interpretation made by the petitioner and hence, she is not entitled for the incentive increment for B.Ed degree, which is not considered as higher qualification, while working in the post of B.T.Middle School Headmaster.

6.Heard both sides and perused the records.

7.Admittedly, the fourth respondent has passed the impugned order, directing the petitioner to recover a sum of Rs.1,85,466/- paid to the petitioner towards incentive increment, without even a notice or affording an opportunity of personal hearing to her.

8.It is well settled that recovery of excess payment made by the Employer, without notice to the Employee, is in violation of the principles of natural justice and the same cannot be sustainable in law.

9.Having regard to the admitted position that no notice was issued and no opportunity of personal hearing to the petitioner, the fourth respondent has passed the impugned order of recovery and applying the aforesaid settled law to the facts of the present case, this Court is inclined to set aside the order impugned herein.

10.Accordingly, the order dated 19.03.2018 passed by the fourth respondent is set aside and the matter is remitted to the fourth respondent for passing a fresh order, on merits and in accordance with law, after

affording an opportunity of personal hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VIII)
Dated : 28/03/2019

***Initial Corrected as per the order
made in WMP No.19171/19 in WP No.8791/18
Dated 19/08/2019**

//True Copy//

***Sd/-
Assistant Registrar (Insp.cell)
Dated : 20/09/2019**

Sub Assistant Registrar

ms
To

**Corrected
order may be
substituted
to the order
already
dispatched
on 27/5/19**

- 1.The Secretary to Government,
Department of School Education,
Fort St.George,
Chennai - 600 009.
- 2.The Director,
Directorate of Elementary Education,
DPI Campus,
College Road, Chennai.
- 3.The District Elementary Educational Officer,
Kancheepuram District,
Kancheepuram.
- 4.The Assistant Elementary Education Officer,
Illathur Panchayat Union,
Povunjur,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.A.Vinothraj , Advocate SR.No. 93179

W.P.No.8791 of 2018

A.SK (03/04/2019)
GMY (20/09/2019)