

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.32457 of 2015

and

M.P No.1 of 2015

K.Subramanian

..Petitioner

Vs

1. The Government of Tamil Nadu

Rep. by its Principal Secretary

Finance (CMPC) Department

Fort St. George, Chennai-600 009.

2. The Director of Elementary Education

College Road, Chennai-600 006.

3. The District Elementary Educational Officer

Dharmapuri, Dharmapuri District

4. The Assistant Elementary Educational Officer

Karimangalam-635 111

Dharmapuri District.

5. The Additional Asst. Elementary

Educational Officer,

Karimangalam-635 111

Dharmapuri District.

6. The Principal Accountant General

(Accounts & Entitlements), Tamil Nadu

No.361, Anna Salai

Teynampet, Chennai-600 018.

7. The Assistant Treasury Officer

Palacode, Dharmapuri District

..Respondents

Prayer:- This Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the order passed by the 7th Respondent in her proceedings R.C No.553/2015/A dated 25.09.2015 and quash the same.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.K.Karthikeyan
Government Advocate for R1 & R7
Mrs.T.Selvarani for R6

Mrs.P.Kavitha
Government Advocate for R2 to R5

O R D E R

This Writ Petition has been filed challenging the order passed by the 7th Respondent in her proceedings R.C No.553/2015/A dated 25.09.2015 and quash the same.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 5 and 7 and the learned counsel appearing for the 6th respondent.

3. The Writ Petitioner was appointed as Secondary Grade Teacher in Uthangarai Panchayat Union Elementary School, on 31.03.1982 and he was transferred to Palacode Panchayat Union. He was awarded selection grade pay in the cadre of Secondary Grade Assistant on 31.03.1992 and subsequently, he was promoted as Primary School Headmaster on 07.12.1994. Thereafter, he was awarded Selection Grade in the cadre of Primary School Head Master with effect from 31.03.2002 and his pay was fixed in the cadre of Secondary Grade Primary School Headmaster in the scale pay of Rs.6,500-200-10500 with effect from 31.03.2002. He was promoted to the post of Middle School Headmaster with effect from 18.04.2005 and he was allowed to draw his pay and allowances in the B.Ed Grade Middle School Headmaster giving one increment for promotion, since the scale of pay for Middle School Headmaster is lower than the scale of pay Selection Grade Secondary Teacher, with reference to G.O Ms. No. 590 Finance Department dated 01.08.1992. In the aforesaid G.O, the Government ordered permitting to draw the pay on promotion in the same scale of pay in which an individual is drawing pay prior to promotion, if an individual is promoted from Selection Grade of lower Post carrying higher scale of pay to Ordinary Grade of Higher Post carrying Lower Scale of pay. Accordingly, the writ petitioner was allowed to draw his pay in the Selection Grade Secondary Grade Teacher scale of pay in the B.Ed Grade Middle School Headmaster promotion post. He was retired from service on 30.06.2013. Pursuant to the retirement from the service, the petitioner has availed the pensionary benefits from the respondent. At that stage, by an order dated 25.09.2015, the 7th respondent, namely, the Assistant Treasury Officer, has communicated the order of the 6th respondent, namely, the Principal Accountant General, Chennai, by stating that the excess payment has been made to the petitioner. It is further stated that the pension of Rs.12,920/- fixed by the Accountant General is incorrect and revised lesser pension of Rs.11,825/- has been authorised by the A.G, Chennai. Due to excess payment, the recovery will be made from 07/2013 to

08/2015 for an amount of Rs.83,160/- from the monthly pension 10/2015 onwards. Challenging the aforesaid order, the present writ petition is filed by the writ petitioner.

4. According to the petitioner, the 6th respondent had sent a communication in proceedings vide Pen 17/1/Pt./5765/R1613419/2015-16 dated 26.5.2015 addressed to the 4th respondent namely, the Assistant Elementary Educational Officer and the copy of the said communication was also addressed to the writ petitioner, wherein, the 6th respondent has stated that the revised pay on 01.01.2006 will be only 14510 + 4700= 19210 as per G.O 23, Grade Pay of Rs.5,400/- sanctioned vide this office letter Pen/16/1/51613419/Rev/14-15 dated 08.10.2014 is not in order. Hence, due to excess payment, intimation was sent to the 4th respondent. As the reply of the 4th respondent was not satisfactory, he was asked to send a reply regarding the excess amount as stated in the letter dated 10.04.2015. If no such reply is received from the date of receipt of the letter within three weeks, it could be construed that there is no explanation offered and the recovery proceedings would be initiated without further notice. Based on the aforesaid communication, the writ petitioner made a representation on 15.06.2015. According to the petitioner, no order has been passed for the petitioner's representation and the present impugned order has been passed by the 7th respondent. So, from the aforesaid fact, there is no opportunity was granted to the petitioner. Despite the opportunity granted to the 7th respondent, the 6th respondent has not considered the petitioner's representation for passing final orders on the aforesaid remarks and therefore, the impugned order is liable to be quashed.

5. Though notice has been served, none appeared for the 6th respondent.

6. The learned Government Advocate appearing for the 1st and 7th respondents would submit that based on the communication sent by the 6th respondent, namely, the Principal Accountant General, Chennai, the 7th respondent has passed the said impugned order. Therefore, the 7th respondent is entitled to recover the aforesaid excess amount paid to the writ petitioner and she has incorrectly fixed the scale of pay to the petitioner. Therefore, the aforesaid order is correct and the writ petition is liable to be rejected.

7. Further, the learned Government Advocate would submit that if any remarks has been called for by the 6th respondent, the Education authorities shall furnish the said remarks based on the Government order and the representation made by the writ petitioner.

8. Considering the submissions made by both parties, it reveals that the 6th respondent has sent a communication to the 4th respondent, the Assistant Elementary Educational Officer, vide his proceedings Pen 17/I/Pt.5765/R1613419/15-16 dated 26.05.2015, wherein, it is stated that he had wrongly sanctioned the pension amount by letter Pen 16/1/51613419/Rev/14-15/ dated 08.10.2014. Therefore, excess amount has been made to the writ petitioner and asked them to submit the representation to the 6th respondent within three weeks time. Based on the aforesaid communication, the writ petitioner made a representation on 15.06.2015. According to the petitioner, no order has been passed by the 6th respondent. In the mean time, the 7th respondent has passed the recovery order against the petitioner. Further, it is seen from the records that neither the 6th respondent give any opportunity to the petitioner nor pass final orders on the representation of the petitioner dated 15.06.2015 and the same was also not communicated to the writ petitioner. The 7th respondent has passed the impugned order without giving any opportunity to the petitioner. Therefore, the impugned recovery order passed by the 7th respondent against the petitioner is unsustainable and against the principles of natural justice and the same is liable to be quashed.

9. In view of the above, this Court is inclined to pass the following order:

i) The impugned order passed by the 7th respondent is quashed.

ii) The 6th respondent is directed to consider the petitioner's representation dated 15.06.2015 and pass orders in accordance with law as early as possible, more preferably, within a period of 12 weeks from the date of receipt of a copy of this order.

iii) If any order passed by the 6th respondent, the same shall be communicated to the petitioner.

iv) If necessary, the 6th respondent can call for remarks from the 3rd and 4th respondents to consider the representation of the petitioner.

10. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary
Finance (CMPC) Department
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Chennai-600 009.
2. The Director of Elementary Education
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Chennai-600 006.
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(Accounts & Entitlements), Tamil Nadu
No.361, Anna Salai
Teynampet, Chennai-600 018.
7. The Assistant Treasury Officer
Palacode, Dharmapuri District.

+lcc to Ms.T.S.Selvarani, Advocate, SR.No.103982.
+lcc to Mr.P.Ganesan, Advocate, SR.No.103808
+lcc to Government Pleader, SR.Nos.104062 & 104025.

सत्यमेव जयते

W.P.No.32457 of 2015
and MP.No.1 of 2015

BR(CO)
CSR: 29/01/2020

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