



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M. DHANDAPANI

W.P. No.18980 of 2019

and

W.M.P. Nos.18330 & 18331 of 2019

A.Krishnan

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Krishnagiri District,
Krishnagiri - 635 001.
- 4.The District Educational Officer,
Mathur Block,
Krishnagiri District.
- 5.The Accountant General,
Office of the Accountant General (A&E)
361 Anna Salai,
Chennai - 600 018.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to call for the records of the fifth respondent in ref.P10/5/11022819/ADK dated 12.09.2018 and the consequential order of the third respondent in ref.Na.Ka.No.5838/A12018 dated 26.09.2018, quash the same and consequently to direct the respondents to fix the pay scale of the petitioner in the selection grade pay scale of elementary school Head Master with effect from 01.01.2006 as per G.O.Ms.No.23 dated 12.01.2011 and the clarification letter of the Government dated 05.12.2012 with consequential pensionary benefits and thereby direct the



respondents to refund the sum of Rs.3,08,029/- to the petitioner with interest at the rate of 6% per annum.

For Petitioner : Mrs.Dakshayani Reddy

For Respondents: Mrs.P.Kavitha
Government Advocate

O R D E R

This writ petition has been filed challenging the proceedings of the 5th respondent dated 12.09.2018, wherein, the pension proposal of the petitioner was returned for re-fixation of pay and the consequential order of the 3rd respondent dated 26.09.2018, re-fixing the pay of the petitioner and ordering recovery of the amount paid in excess.

2.The case of the petitioner is that the petitioner was appointed as Secondary Grade Teacher in Krishnagiri District. Thereafter, he was promoted to the post of Elementary School Head Master with effect from 14.06.1990. Then, after completion of 10 years of service, he was moved to selection grade in the said post and accordingly, he continued to draw his salary in the selection grade pay scale. Thereafter, he was promoted to the post of Middle School Head Master. Since, he was already drawing a higher pay in the selection grade pay scale than that of an ordinary Middle School Head Master, only the promotional increment was granted and his pay was not re-fixed. Thereafter, on implementation of 6th and 7th Pay Commission, the pay of the petitioner was re-fixed accordingly. The petitioner retired on superannuation on 31.07.2018. The pension proposal in respect of the petitioner, which was forwarded by the 3rd respondent, was returned by the 5th respondent, vide impugned order dated 12.09.2018, directing to re-fix the pay scale of the petitioner only in the ordinary grade of pay in the post of Middle School Head Master. Consequently, the 3rd respondent issued the impugned order dated 26.09.2018, re-fixing the pay of the petitioner and ordering recovery of Rs.3,08,029/-, which was excessively paid to him so far. Challenging the impugned orders, the petitioner has filed the present writ petition.

3.Learned counsel for the petitioner submitted that the petitioner was already drawing higher pay in selection grade before getting promoted to the post of Middle School Head Master. He further contended that an employee, on promotion, cannot draw a salary less than what he was drawing in the earlier post and on this basic principle, the pay of the petitioner was not re-fixed in the new post of Middle School Head Master. But, the respondents, without even without issuing



any show cause notice or prior intimation, have issued the impugned orders for re-fixation of pay of the petitioner and for recovery of excess amount from him, which is in violation of principles of nature justice. Hence, the impugned orders are liable to be quashed.

4.Per contra, learned Government Advocate, by relying upon the counter affidavit filed by the 4th respondent, would submit that the benefit of higher grade pay applicable to lower post (Selection Grade/Special Grade) on subsequent promotion to a higher post with lower grade pay is admissible only in case of promotions after 01.01.2006. The petitioner, having been promoted to the higher post of Middle School Headmaster on 28.04.2005, which is prior to 01.01.2006, has already availed the benefit of fixation of pay by applying 1.86 factor in the revised scale of pay with effect from 01.01.2006 by taking into account the substantive pay in the pre-revised scale of pay as on 31.12.2005. Therefore, the petitioner is not entitled for higher pay and hence, the impugned orders do not require any interference by this Court.

5.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

6.Considering the facts and circumstances of the case, this Court is prima facie of the view that the petitioner should not be deprived of his opportunity to explain his case before the respondents. Therefore, without going into the merits of the case, the matter is remanded back to the respondents for issuance of a show cause notice to the petitioner calling for explanation in this regard. On receipt of such show cause notice, the petitioner shall submit his explanation within a period of two weeks, thereafter, and on receipt of reply/explanation from the petitioner, the respondents shall pass appropriate orders in accordance with law, within a period of four weeks, thereafter.

With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I MDU)

//True Copy//

Sub Assistant Registrar

bkn



To

- 1.The Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Elementary Education,
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- 4.The District Educational Officer,
Mathur Block,
Krishnagiri District.
- 5.The Accountant General,
Office of the Accountant General (A&E)
361 Anna Salai,
Chennai - 600 018.

+1cc to Ms.Dakshayani Reddy, Advocate, S.R.No. 96517
+1cc to the Government Pleader, S.R.No. 97091

W.P. No.18980 of 2019

GJ(CO)
GN(02/07/2020)