

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.14415 of 2014

R.Murugan

...Petitioner

Versus

- 1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Secretary to Government,
Finance (Pay Cell) Department,
Fort St.George,
Chennai - 600 009.
- 3.The Joint Director of School
Education (Vocational Education)
College Road,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Dindigul District,
Dindigul.
- 5.The Head Master,
Nehuruji Memorial Municipal
Higher Secondary School,
Dindigul - 625 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the orders of the fifth respondent in proceedings in Na.Ka.110/A1/2014 dated 14.05.2014 relating to re-fixation and recovery of pay and quash the same and consequently, direct the respondents to allow the petitioner to draw the Selection Grade Pay of Rs.15,600-31,900+Rs.5400 (GP) in terms of Government Letter No.63305/Pay Cell/2010-12 dated 08.11.2010 and G.O.Ms.No.23 Finance Department dated 12.01.2011 issued by the second respondent.

For Petitioner : Mr.S.Kamadevan
For Respondents -1 to 4 : Mr.K.Karthikeyan,
Government Advocate
Respondent - 5 : No Appearance

O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The relief sought for in this Writ Petition is to call for the records pertaining to the orders of the fifth respondent in proceedings in Na.Ka.110/A1/2014 dated 14.05.2014, relating to re-fixation, recovery of pay and to quash the same and consequently, to direct the respondents to allow the petitioner to draw the Selection Grade Pay of Rs.15,600-31,900+Rs.5400 (GP) in terms of Government Letter No.63305/Pay Cell/2010-12 dated 08.11.2010, and G.O.Ms.No.23 Finance Department dated 12.01.2011, issued by the second respondent.

3.1. The petitioner was initially appointed as Part-time Vocational Instructor to handle the classes will go long or continue for the whole day in the Higher Secondary Sections and his services were brought on regular time scale of pay from 16.10.1992, pursuant to the proceedings of the third respondent dated 31.05.2007. The petitioner reached the Selection Grade in the year 2002 and he is entitled to get corresponding Selection Grade Scale of Pay of Rs.15,600-31,900+Rs.5,400/- as per the VIth Pay Commission recommendations issued in G.O.Ms.No.234 Finance dated 01.06.2009 and subsequent letter dated 08.11.2010, in which, it is stated that the fixation of Selection Grade Scale of Pay in a particular post shall be restricted to the ordinary grade scale of pay of first level promotion. Pursuant to the said Government order and the clarifications issued in letter dated 15.09.2010, issued by the second respondent, the fifth respondent fixed the petitioner's Selection Grade Scale of Pay at Rs.15,600-39,100+Rs.5,400/- as on 01.01.2006 and granted annual increments.

3.2. It is significant to state that the above fixation of Selection Grade Scale of Pay is based on the recommendations of the One Man Commission which culminated in issuing the orders in G.O.Ms.No.23 Finance Department dated 12.01.2011. Based on the said communication, the fifth respondent passed the impugned order of re-fixation in the pay band of Rs.9,300-34,800+4600 (GP) and consequent recovery with a further direction to remit

the excess amount. Aggrieved over the said re-fixation and recovery of excess pay, the petitioner has filed the present writ petition for the reliefs stated supra.

4. The learned counsel appearing for the petitioner submitted that the respondent/Department had not provided any opportunity to the petitioner while passing the proceedings in Na.Ka.110/A1/2014 dated 14.05.2014 and therefore, the same is liable to be quashed. He further submitted that the petitioner is attaining the age of superannuation on 30.06.2019. Hence, at this stage, if recovery proceeding is initiated, the petitioner will be put to severe hardship.

5. The learned Government Advocate appearing for the respondents 1 to 4 submitted that based on the Audit Objection dated 25.09.2013, and the instructions issued by the Director of School Education, the respondent department has passed the impugned proceedings directing the re-fixation of pay and recovery of excess pay. He further submitted that the petitioner is going to attain super superannuation on 30.06.2019. Therefore, without doing prejudice to the rights of the department, an opportunity of hearing will be granted to the petitioner before passing the orders.

6. On perusal of the impugned order, it is crystal clear that prior to the passing of the impugned order, no opportunity of hearing was given to the petitioner. Therefore, considering the facts and circumstances of the case, this Court is inclined to pass the following directions:

(i) The petitioner is directed to make a representation before the fourth respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of such representation, the fourth respondent shall consider the same and after affording an opportunity of personal hearing to the petitioner, pass appropriate orders on merits and in accordance with law preferably on or before 20.06.2019.

(iii) If any Recovery order passed, the respondents are directed to recover the excess salary given to the petitioner by way of deducting the same from his retirement benefits.

7. In the result, this Writ Petition is allowed with the above directions and the impugned order passed by the fifth respondent vide proceedings in Na.Ka.110/A1/2014 dated 14.05.2014 is quashed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Secretary to Government,
Finance (Pay Cell) Department,
Fort St.George,
Chennai - 600 009.
- 3.The Joint Director of School
Education (Vocational Education)
College Road,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Dindigul District,
Dindigul.
- 5.The Head Master,
Nehuruji Memorial Municipal
Higher Secondary School,
Dindigul - 625 001.

+1cc to Mr.S.Kamadevan, Advocate Sr.38557
+1cc to the Government Pleader Sr.39095

W.P.No.14415 of 2014

ca[co]
srg 24/05/2019