

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 12.02.2019

CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1921 of 2018
and
W.M.P.No.2391 of 2018
and
WMP.No.28448 of 2018

R.Rathinavel

... Petitioner

..Vs..

- 1.The Chief Educational Officer,
Cuddalore.
- 2.The District Educational Officer,
Cuddalore.
- 3.Divisional Audit Officer,
Department of School Education,
Coimbatore.
- 4.The Headmaster,
Government Higher Secondary School,
Karaikadu,
Cuddalore Taluk,
Cuddalore District.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records and quash the proceedings of the 4th respondent in his Na.Ka.No.23/2018 dated 20.01.2018 and consequently directing respondents to pay petitioner salary and attendant benefits including pension, as fixed from 17.08.2009.

For Petitioner : Mr.R.Gururaj

For Respondents : Mr.A.Rajaperumal
AGP

O R D E R

The order passed by the 4th respondent in proceedings dated 20.01.2018 in respect of excess payment of selection grade pursuant to the wrong calculation is sought to be recovered.

2. The learned counsel appearing on behalf of the writ petitioner states that the revision of salary as well as the selection grade salary was granted to the writ petitioner in accordance with the Government Orders in force. However, based on the audit objection, the said amount is sought to be recovered even without issuing any show cause notice and opportunity to the writ petitioner. Thus, the impugned order is in violation of the principles of natural justice.

3. This apart, the learned counsel for the petitioner is of an opinion that there was no error in respect of the grant of selection grade and the fixation of pay which was done by the establishment of the department in accordance with the Government Orders in force.

4. The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions raised by the writ petitioner by stating that the impugned order has been passed based on the audit objection raised and the Selection Grade benefits were erroneously granted to the writ petitioner, based on the wrong fixation of pay. Thus, the department is empowered to recover the excess pay already sanctioned and paid to the writ petitioner. There is no irregularity in respect of recovering the excess pay already granted to the writ petitioner and thus, the writ petition is liable to be dismissed.

5. Considering the arguments as advanced by the respective learned counsels appearing on behalf of both sides, this Court is of the considered opinion that, errors if any occurred in respect of fixation of pay or revision of pay can be rectified by the Competent Authorities at any point of time. However, the excess payment if any paid at the instance of the department cannot be recovered after a lapse of long years and more so, after the retirement of an employee. The said principle has already been enumerated by the Apex Court of India in the State of Punjab & Ors., vs. Rafiq Masih reported in (2015) 4 SCC 334 and the relevant paragraph No.18 is extracted hereunder:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6. In view of the fact that the writ petitioner has already retired from service on 31.05.2018, this Court is inclined to pass an order as follows:-

(i) The impugned order passed by the 4th respondent in proceeding bearing No. Na.Ka.No.23/2018 dated 20.01.2018 is quashed.

(ii) The respondents are directed to issue a show-cause notice to the writ petitioner, in respect of their decision to revise the scale of pay of the writ petitioner and on receipt of any explanations/objections, the correct scale of pay as applicable as per the Government Orders may be fixed and consequently, all pensionary benefits and pension can be regulated.

(iii) The respondents are directed, not to recover the excess payment already paid to the writ petitioner and if any excess payment was already recovered the same is to be repaid to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

7. With these directions, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns/Pkn

To

1.The Chief Educational Officer,
Cuddalore.

2.The District Educational Officer,
Cuddalore.

3.Divisional Audit Officer,
Department of School Education,
Coimbatore.

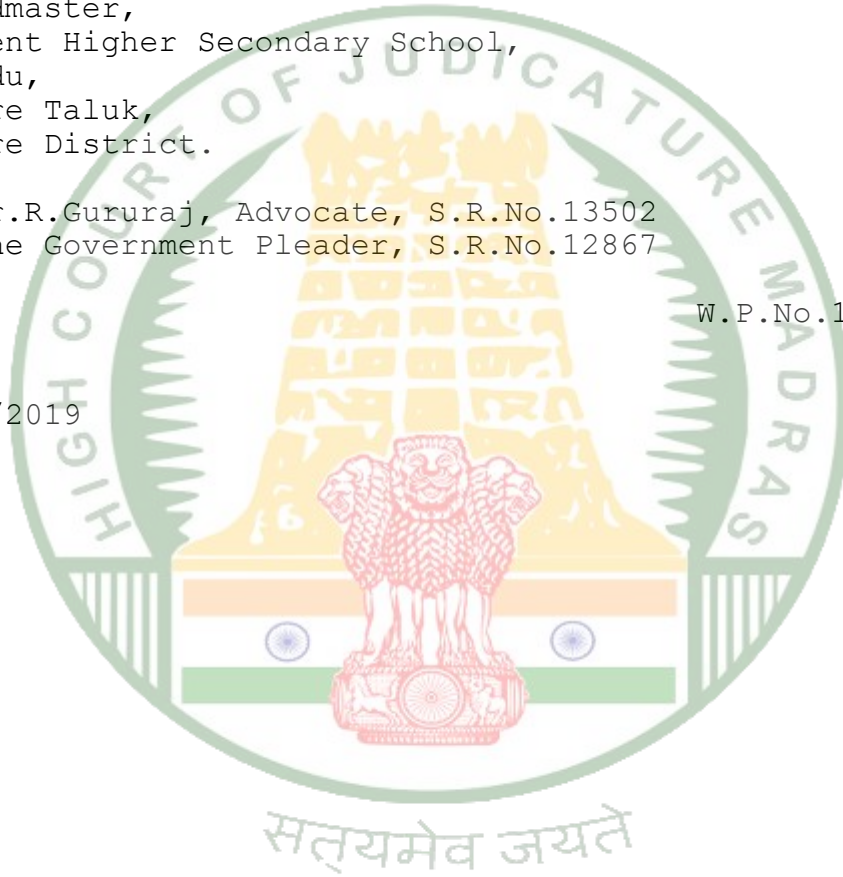
4.The Headmaster,
Government Higher Secondary School,
Karaikadu,
Cuddalore Taluk,
Cuddalore District.

+1cc to Mr.R.Gururaj, Advocate, S.R.No.13502
+1cc to the Government Pleader, S.R.No.12867

W.P.No.1921 of 2018

SSD(CO)

rrs 21/03/2019



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