



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

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W.P. (MD) Nos.14525, 14526, 14527 & 14528 of 2015**and****M.P. (MD) Nos.1 & 2 of 2015 (in all W.Ps.)**

S.Saravanan ... Petitioner in W.P. (MD) No.14525/2015
A.Ganesan ... Petitioner in W.P. (MD) No.14526/2015
K.Amutha ... Petitioner in W.P. (MD) No.14527/2015
N.Mamandi ... Petitioner in W.P. (MD) No.14528/2015

vs.

- 1.The State of Tamil Nadu
rep.by the Principal Secretary
Finance (Pay Cell) Department
Secretariat, St.George Fort
Chennai-9
 - 2.The District Elementary Educational Officer
O/o.the District Elementary Educational Officer
Collectorate, Sivagangai District
 - 3.The Assistant Elementary Educational Officer
O/o.the Assistant Elementary Educational Officer
S.Pudur, Sivagangai District-630 410
 - 4.The District Elementary Educational Officer
Audit Section
O/o.the District Elementary Educational Officer
Madurai Regional,
Madurai District
- ... Respondents in all W.Ps.

COMMON PRAYER (in all W.Ps.): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records pertaining to the impugned order of Recovery in Na.Ka.No.637/A1/2014 dated 23.07.2015 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

(in all W.Ps.)

For Respondents : Mrs.S.Srimathi
(in all W.Ps.) Special Government Pleader

C O M M O N O R D E R

The impugned orders of recovery, dated 23.07.2015, passed by the third respondent, are sought to be quashed in the present writ petitions.

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2. The writ petitioners were appointed as Secondary Grade Teachers in the Panchayat Union Schools, S.Pudur Union, Sivagangai District and their services were regularized and subsequently, they were promoted as Headmaster / Headmistress.

3. The learned counsel for the writ petitioners states that the scale of pay was fixed to the writ petitioners as per the Government Orders in force. While so, based on the audit objections, the impugned orders of recovery have been issued.

4. The learned counsel for the writ petitioners further states that no notice or opportunity was provided to the writ petitioners before issuing the impugned orders of recovery. Thus, the impugned orders are in violation of the principles of natural justice.

5. This Court is of the considered opinion that any order affecting the service rights or monetary benefits of an employee is to be issued only after providing an opportunity to the employee concerned. This being the basic principle to be followed, the recovery cannot be imposed, without providing an opportunity to the writ petitioners. However, the authorities competent are bound to pay the correct scale of pay, if any mistake occurred in fixation of pay. In other words, the fixation of pay is to be done strictly with reference to the Pay Rules as well as the Government Orders in force. In such view of the matter, this Court is of the opinion that the case of the writ petitioners is to be considered for the purpose of revision of scale of pay with reference to the Pay Rules and the Government Orders in force. As far as the excess payment is concerned, if there is no misrepresentation or otherwise on the part of the writ petitioners, then, the same cannot be recovered, without providing an opportunity to them. This being the factum, this Court is of the considered opinion that the case of the writ petitioners is to be considered by the respondents and accordingly, the following orders passed:

- i. The impugned orders of recovery, dated 23.07.2015, passed by the third respondent, are quashed.
- ii. The respondents are directed to verify the scale of pay, as applicable to the writ petitioners, with reference to the Pay Rules as well as the Government Orders in force and accordingly, fix the correct scale of pay, after issuing a show-cause notice to the writ petitioners and receiving their explanations.



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iii. In the event of any excess payment, the same is to be clearly mentioned in the recovery orders and thereafter, further actions can be initiated. If the writ petitioners are not responsible for any such excess payment of salary, then the said excess payment is to be recovered from the officials, who all are responsible and accountable for the purpose of fixing erroneous pay to the writ petitioners. In this regard, if necessary, an enquiry is to be conducted.

6. With these observations, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Principal Secretary,
Finance (Pay Cell) Department,
State of Tamil Nadu,
Secretariat, St. George Fort,
Chennai-9.

2. The District Elementary Educational Officer,
O/o. the District Elementary Educational Officer,
Collectorate, Sivagangai District.

3. The Assistant Elementary Educational Officer,
O/o. the Assistant Elementary Educational Officer,
S. Pudur, Sivagangai District-630 410.

4. The District Elementary Educational Officer,
Audit Section,
O/o. the District Elementary Educational Officer,
Madurai Regional, Madurai District.

+4 CC to M/s. T. LAJAPATHI ROY, Advocate IN SR-72863[F] dated 02/07/2019

W.P. (MD) Nos. 14525, 14526, 14527 &
14528 of 2015 and
M.P. (MD) Nos. 1 & 2 of 2015 in all W.P.s.)
28.06.2019