BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

THURSDAY THE TWENTIETH DAY OF JUNE TWO THOUSAND AND NINETEEN

CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos.20677, 20679, 20681, 20682 and 20684 of 2015
and
M.P(MD)Nos.1,1,1,1,1 of 2015
and
W.M.P(MD)No.1236, 1238, 1240 to 1242 of 2016

S.S.Murugan
Head Master, Panchayat Unionmiddle School Kuruvikathiyal,
Kadaladi Union, Ramnad District- 623 704.
... Petitioner in WP(MD). 20677/ 2015

M.Sivakani
Headmaster, Panchayat Union Primary School, Karungulam,
Kadaladi Union, Ramnad Dist 623 703
... Petitioner in WP(MD). 20679/ 2015

K. Sarprasatha Mary
Headmaster, Panchayat Union Middle School, Kadaladi,
Kadaladi Union, Ramnad District 623 703.
... Petitioner in WP(MD). 20681/ 2015

A.James
Headmaster, Panchayat Union Middle School, Melasiropothu,
Kadaladi Union, Ramnad Dist 623 704
... Petitioner in WP(MD). 20682/ 2015

S. Muneeswari
Headmaster, Panchayat Union Middle School, Poopandiapuram,
Kadaladi Union, Ramnad District 623 120.
... Petitioner in WP(MD). 20684/ 2015

Vs. -

1. The State of Tamil Nadu
   Rep. by its Secretary, Department of School Education,
   Fort St. George, Chennai-9.
2. The Director of Elementary Education,
   College Road, Chennai-6.
3. The District Elementary Educational Officer,
   Ramnad, Ramnad District- 623 501.
4. The Assistant Elementary
   Educational Officer, Kadaladi, Ramnad District- 623 703.

... Respondents in all Petitions

Prayer in WP(MD). 20677/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent Assistant Elementary Educational Officer in Na.Ka.No. 99/A2/A3/2015 dated 10.10.2015, quash the same.

Prayer in WP(MD). 20679/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent Assistant Elementary Educational Officer in Na.Ka.No.99/A2/A3/2015 dated 10.10.2015, quash the same.

Prayer in WP(MD). 20681/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent Assistant Elementary Educational Officer in Na.Ka.No. 99/A2/A3/2015 dated 10.10.2015, quash the same.

Prayer in WP(MD). 20682/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent Assistant Elementary Educational Officer in Na.Ka.No.99/A2/A3/2015 dated 10.10.2015, quash the same.

Prayer in WP(MD). 20684/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent Additional Assistant Elementary Educational Officer in Na.Ka.No. 99/A2/A3/2015 dated 10.10.2015, quash the same.

For Petitioner :Mr.T.Cibi Chakraborthy
for M/s.Isaac Chambers

For Respondents :Mrs.S.Srimathy,
Special Government Pleader

COMMON ORDER

The orders of recovery dated 10.10.2015 are sought to be quashed in these present writ petitions.

2.All these petitioners are working as Headmaster in the Panchayat Union Middle School. The petitioners joined as Secondary Grade Teachers in Panchayat Union Primary School and thereafter, promoted to the posts of Primary School Headmasters. Subsequently, the petitioners were promoted as BT Assistant and posted as Middle School Headmasters.

3.The learned counsel appearing on behalf of the petitioners states that pursuant to the Sixth Central Pay Commission recommendations, the State Government adopting the policy of the Central Pay Commission issued G.O.Ms.No.234, Finance (Pay Cell) Department), dated 01.06.2009 fixing the revised scale of pay and allowance to the State Government Employees and Teachers including the employees working the Local Bodies. The Government Order states that the notional effect is granted from 01.01.2006 and the monetary benefits are granted with effect from 01.01.2007. The Government Order contains the fitment tables and the learned counsel for the petitioners state that pursuant to the Government Order, the revision of pay was granted to all these writ petitioners and Pay Commission arrears were also paid.

4. The Officials of the Education Department at the District Level also had considered the case of the writ petitioners for grant of revision of pay and accordingly, the revision of pay was granted along with Pay Commission arrears to all these writ petitioners and they have received the same. Subsequently, an Audit objection was raised during the year 2015 by the Audit Officers by stating that the fixation of pay was erroneously fixed in respect of these writ petitioners and the fixation of pay is in violation of the Government Orders and the Pay rules in force.

5. The counter affidavit filed by the respondents states that the Government Order in G.O.Ms.No.234, dated 01.06.2009, 6th Pay Commission was implemented. Even according to the petitioners, it is an admitted fact that the petitioners were promoted as Primary School Headmasters even before attaining the service of 10 years for grant of Selection Grade or Special Grade within the crucial date of

01.01.2006 in the post of Primary School Headmasters. The petitioners had reached the Selection Grade in the cadre of Primary School Headmasters only after 01.01.2006, which is the cut off date fixed in the Government Order. Thus, the fixation of pay done in favour of the writ petitioners with reference to G.O.Ms.No.234, dated 01.06.2009 was erroneous and in violation of the very directions issued by the Government in this regard.

6. After implementation of the 6th Pay Commission in G.O.Ms.No.234, dated 01.06.2009, the dispute of pay anomaly among the employees arose and in order to rectify the same, the State Government had constituted One Man Commission and based on the commission's report, the State Government agreed to revise the existing scale of pay for various employees of various departments. Finally, 17 additional fitment tables for various categories of employees were issued along with the order of the Finance Department Letter, dated 15.09.2010. As per the said fitment tables, the Primary School Headmasters in the ordinary grade who had received pay scale of Rs.5300-15-8300/- was not eligible to fix the revision of scale of pay as mentioned in the additional fitment table 15.

7.Subsequently, another issue with regard to Grade Pay of Teachers working under the School Education Department arose and in order to rectify the same another Government Order in G.O.Ms.No.23, Finance PC Department, dated 12.01.2011 was issued, by which scale of pay for Primary School Headmasters (ordinary grade) was revised from Rs.9300-34800-4300/- to Rs.9300-34800+4500/-. The effect of the Government Order shall take notional effect from 01.01.2006 and monetary benefit and Grade Pay from 01.01.2011.

8.Pursuant to the G.O.Ms.No.234, dated 01.06.2009, the contention of the respondents is that subsequent to the said Government Order, the same Finance Department has sent two clarification communications vide Letter No.63305/Pay Cell/2010-1 dated 08.11.2010 and letter No.14483/CMPC/2011-1, dated 05.01.2012 to all the departments, by which it has been clarified as follows:-

> "the selection grade/special grade scales of pay is applicable only to teachers who have awarded selection grade/special grade prior to 01.01.2006 and teachers who have opted for the revised scale of pay on a subsequent date between 01.01.2006 and 31.05.2009 i.e., from the date of their award of selection grade/special grade. Further, the selection grade/special grade scales of pay also take notional effect from 01.01.2006 or from the date of exercising revised option as the case may be and with monetary benefit from 01.01.2011."

Further, in the said clarification letter dated 05.01.2012 itself separate scale of pay for Primary School Headmaster in the ordinary, selection and special grade have been prescribed as follows:-

PRIMARY SCHOOL HEADMASTER:-

(i)Ordinary Grade - Rs.9300-34800+GP4500/-

(ii)Selection Grade - Rs.15600-39100+GP5400/-

(iii)Special Grade - Rs.15600-39100+GP 5700/-

9. In view of the clarification letter, ordinary grade, selection grade and special grade shall be considered as on the crucial date of 01.01.2006. That means as on 01.01.2006 the grade of the employee shall be considered. In so far as the petitioners are concerned, admittedly they were promoted as Primary School Headmaster on 28.08.1997, 29.08.1997, 29.08.1997, 17.07.1998 and 17.07.1998 respectively and awarded selection grade only on 28.08.2007,29.08.2007, 15.01.2007, 17.07.2008 and 17.07.2008 respectively. So, it is not at all disputed fact that as on 01.01.2006 they were in the ordinary grade in Primary School Headmasters post. Hence, their revised scale of pay should have been fixed as Rs.9300-34800+4500/-. But the then Additional Elementary Education Officer of Kadaladi Union had wrongly presumed as if as on 01.01.2006, the petitioners were awarded Selection Grade in the Primary Headmasters post and wrongly fixed as Rs.15,600-39,100-GP5400/- (which is applicable only to Primary School Headmasters in the Section Grade) instead of Rs.9300-34800+4500/- (which is applicable to Primary School Headmaster in ordinary grade). To that effect, the then Assistant Elementary Educational officer of Kadaladi, Union had passed separate order in favour of the petitioners by considering additional fitment table 15 vide Na.Ka.No.99/A1/2012 dated 16.04.2012.

10. Thereafter, the Additional Assistant Elementary Educational officer of Kadaladi Union through his proceedings in No.1/2014, dated 28.11.2014 had issued a show cause notice to the petitioners in connection with wrong fixation, excess amount and recovery and further he asked them to submit their explanations. But till the impugned order has been passed, the petitioners were not in a position to submit their explanations. Furthermore, the dispute regarding wrong fixation was placed before the audit objection. The auditing authority after having considered the dispute in all aspects and ascertained that vide order dated 16.04.2012 the then Assistant Elementary Educational officer of Kadaladi Union had wrongly revised the petitioners scale of pay in the post of Primary School Headmaster (ordinary grade) as Rs.15600-39100+GP5400/- instead of Rs.9300-34800+4500/-.

11. It is relevant to mention about the Government Order made in G.O.Ms.No.240 Finance Pay Cell Department, dated 22.08.2013, wherein, it has been specifically stated that the revised selection grade/special grade scales of pay is not applicable to the employees who are moving to selection grade/special grade posts on or after 01.06.2009, since those employees are awarded with selection grade/special grade directly in the revised scales of pay and they are entitled for one increment benefit equal to 3% of Basic Pay + Grade Pay, on the date of award of selection grade/special grade.

12. It is made clear that the petitioners have also comes within the purview of G.O.Ms.No.240 dated 22.08.2013 and the communications of the Finance Department made in Letter No.63305/Pay Cell/2010-1, dated 08.11.2010 and Letter No.14483/CMPC/2011-1 dated 05.01.2012. He further submit that the Government had fixed the crucial date of 01.01.2006 for fixing ordinary, selection and special grade in that particular post.

13. In view of the above, it is very clear that the petitioners salary was wrongly fixed in the cadre of Primary School Headmasters Selection Grade. Further, already the petitioners were issued with a show-cause notice for recovery of excess payment already paid, but even then, no explanation has been submitted by them. So, the question of violation of principle of natural justice will not at all arise and only after giving sufficient opportunity, the impugned orders of recovery have been passed by the third respondent and so the order is valid in law. Hence, the present writ petitions are liable to be dismissed, as devoid of merits.

14. This Court is of the considered opinion that the Officials, who are responsible for approving the fixation of pay is expected to be double cautious while implementing the revision of pay disbursement in the Pay commission arrears. There cannot be any lapses, negligence or dereliction of duty on their part in view of the fact that the competent authorities are accountable for the Tax payers money and if any excess payment, it will result un-just infringement to the Government employees. Thus, the financial loss if any, it will viewed seriously and all officials, who are all responsible and accountable must be fixed for such un-just infringement tax payers money. There cannot be any leniency and misplaced sympathy in this regard. The allegations therein in the Education Department in the State Government is that few teachers with the collusion of some District Level Officials are citing the one Government Order or other by misinterpreting the contentions and drawing the arrears of pay commission and other salary benefits without even clarifying whether they are entitled for the same or not. Such erroneous fixation and wrong payment of arrears are made in the Education Department in large scale, mostly, with the collusion of subordinate officials working at the District level. These Chief Educational Officers, District Level Officers, Assistant Elementary Educational Officers, Assistant Educational Officers may not be well-versed with these fixation of scale of pay which involves certain technical analysis. Thus, these Educational authorities must be double cautious while fixing the revision of scale of pay and grant of arrears to the employees and Teaching Staff working in the Education Department. In the event of identifying any arrears or excess payment made, all these officials must be held responsible and liable for such un-just infringement by the employee or group of employees.

15. This being the reason for large number of litigation in the subject of recovery before this Court. The fixation are done erroneously on many occasions. Excess payment of salary and arrears are paid to these employees in violation of Government Order and pay Rules in force. Some cases are traced out in the audit objection and some cases are not at all traced out because audits are conducted in some times in randum and not in all cases. Thus, there is a possibility of large scale loss to the state exchequer. In this regard, a serious actions are highly warranted and all such officials are to be punished and suitable disciplinary actions are to be initiated, if any erroneous fixation are made and excess payment of disbursement made in favour of the employee or group of employees.

16.The Hon'ble Supreme Court of India in the case of ***Chandi Prasad Uniyal and others v. State of Uttarakhand and others*** reported in ***2012 (8) SCC 417***, the settled legal principles in the matter of recovery as follows;

"His lordship Justice K.S.P.Radhakrishnan.J, while speaking for the Bench considered the earlier judgment of the Supreme Court including the judgment of the Three Judge Bench of the Supreme Court in Saiyad Abdul Kadip reported in 2009 (3) SCC475 as well as Shyam Babu Verma's case reported in ***(1994) 2 SCC 521*** held as follows:

> *14.We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.*
>
> *15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case*

and in Col. B.J. Akkara (retd.) case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012."

17.Subsequently, the Three Judge Bench of the Hon'ble Supreme Court of India in the case of State of Panjab and others etc Vs. Rafiq Masih (White Washer) reported in (2014) 8 SCC 883 again reiterated the principles laid down in the case of Chandi Prasad Uniyal and others v. State of Uttarakhand cited supra, para -8 of the judgment of the Three Judges Bench reiterates the legal principles laid down in Chandi Prasad Uniyal case as follows:-

"8.We are of the considered view, after going through various judgments cited at the bar, that this court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered."

18.During the year 2015, once again the Two Judges Bench of the Hon'ble Supreme Court in the case of ***State of Punjab v. Rafiq Masih*** reported in ***(2015) 4 Supreme Court Cases 334*** in paragraph No.18 of the judgment is relevant and the same 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

19.As far as 2015 case of the Supreme Court is concerned, the principles laid down in Chandi Prasad Uniyal case as well as in Rafiq Masih case by the Three Judges Bench of the Supreme Court was reiterated and only exceptions were drawn by stating that in the event of no misrepresentation on the part of the employees belonging to Group III and IV. The excess amount if at all any paid need not be recovered. However, the fixation can be corrected. Thus, 2015 judgment clarifies that only on certain circumstances in respect of certain class of employees and also the retired employees, the excess amount paid cannot be recovered and not in all other cases. Thus, the legal principles settled by the Chandi Prasad Uniyal case and Rafiq case decided by the Three Judges Bench of Supreme Court holds the field of recover and that is to be followed as a binding precedent.

20.Even recently, the Two Judges Bench of the Hon'ble Supreme Court in the case of High Court of Punjab and Haryana v. Jagdev Singh reported in AIR 2016 SC 3523 reiterated the principles followed by the earlier judgments of the Apex Court and accepted the exception cared out in 2015 Rafiq Misih case. Thus, the legal position in the matter of recovery is now settled and accordingly the Government Servants cannot be allowed to enjoy any unjust enrichment of tax payers money.

21.There is a growing trend in the State of Tamil Nadu that the Sub-ordinate officials at the District level and in Panchayat level such Government Orders are some time misinterpret to the advantage of the employees and arrears of amount are drawn from the Government Treasuries. In other words, there are large scale collusions amongst to the District level authorities with the employees for the purpose of drawing these pay commission arrears and thereby causing financial loss to the State exchequer for the purpose of gaining unjust enrichment in favour of the employees. These aspects sought to be clearly considered by the Higher Authorities of the Government and all appropriate actions are to be initiated against in all such cases.

22.In view of the fact that the writ petitioners have served in the cadre of Middle School Headmasters and their fixation were erroneously made and therefore, these writ petitioners are liable to pay back the excess amount received by them, as they cannot retain the tax payers money in an unjust manner. The excess payments are to be repaid to the Government Treasury and this being the legal principles settled by the Supreme Court of India, this Court is of the considered opinion that the writ petitioners have not made out any acceptable legal grounds for the purpose of interfering with the orders impugned in these writ petitions.

23. Accordingly, the following orders are passed:

(i) the relief as such sought for in these writ petition stand rejected;

(ii)the respondents are directed to fix the correct pay of the writ petitioners as applicable to their respective posts strictly in accordance with the Government Orders and the pay rules in force;

(iii) the excess amount, which is to be considered as an unjust enrichment of taxpayers money is to be recovered from the writ petitioners by way of equal monthly installments to be fixed by the competent authorities/respondents;

(iv)the first respondent is directed to issue a consolidated instructions to all the District Collectors and other Subordinate officials to ensure that in the event of excess or erroneous payments are made to the employees, the officials, who all are responsible and accountable, must also face the disciplinary proceedings as well as the recovery as discussed in the judgment in the aforementioned paragraph. Such an instruction/circular is directed to be issued within a period of four weeks from the date of receipt of a copy of this order.

24.Accordingly, the Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary,
Department of School Education,
Fort St. George, Chennai-600 006.

2.The Director of Elementary Education,
College Road, Chennai-600 006.

3.The District Elementary Educational Officer,
Ramnad, Ramnad District-623 501.

4.The Assistant Elementary Educational Officer,
Kadaladi, Ramnad District-623 703.

1CC TO THE SPL GOVT PLEADER SR 70714, 70711, 70718, 70704, 70706

5CC'S TO M/S. ISAAC MOHANLAL, ADVOCATES SR 70379, 70363 TO 70366

TR
17/07/2019
11P/11C

W.P(MD)Nos.20677, 20679, 20681, 20682 and 20684 of 2015
20.06.2019