



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P (MD) No. 9843 of 2013

WEB COPY

R. Seenivasagan

...Petitioner

Vs.

1. The District Elementary Educational Officer,
Theni District.

2. The Assistant Elementary Educational Officer,
Theni, Theni District.

3. The Secretary,
Muthiah Primary School,
Allinagaram, Theni,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in impugned order of the 2nd respondent in Na.Ka. No.252/A1/2012 dated 04.12.2012 and confirmed by the 1st respondent in Na.Ka. No.356/A-3/2013 dated 12.04.2013 and quash the same and consequently, direct the respondents to continue to pay Rs.30,290/-to the petitioner from May 2013 as per the revised pay payable on Selection Grade Head Master of Primary School sanctioned by the Government with periodical increments and other monetary benefits accrued to his service.

For Petitioner	: Mr. K. Appadurai
For Respondents-1 & 2	: Mrs.S. Srimathi
	Special Government Pleader
For Respondent-3	: No appearance.

O R D E R

The impugned order of recovery passed by the 2nd respondent, dated 04.12.2012 which was confirmed by the 1st respondent/appellate authority in proceedings, dated 12.04.2013 are under challenge in the present writ petition.

2. The writ petitioner was initially appointed as Secondary Grade teacher and subsequently promoted to the post of Primary School Head Master.



3. The learned counsel appearing for the writ petitioner states that the benefit of selection grade and special grade was granted to the writ petitioner in accordance with the government order in force. However, the benefits granted were stopped and ordered to be recovered through the impugned proceedings. The appeal preferred by the writ petitioner also went against him and thus, he was constrained to move the present writ petition.

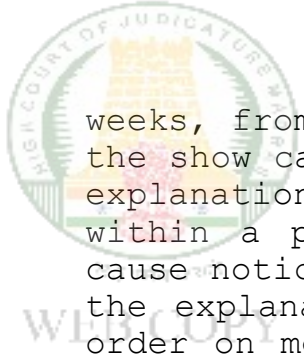
4. The learned counsel for the writ petitioner states that no notice or opportunity was given to the writ petitioner before issuing impugned order for recovery. Thus, the impugned order is in violation of principles of natural justice. This apart, the writ petitioner is eligible to get selection grade and special grade in accordance with the government order in force and there was no infirmity in respect of grant of selection grade by the competent authorities during the relevant point of time.

5. The learned counsel appearing on behalf of the respondents opposed the contention by stating that the writ petitioner is not eligible for selection grade and he was ineligible as per the criteria fixed in the government order. This apart, the appellate authority also confirmed the order of recovery and there is no reason to reverse the order as the writ petitioner is not eligible to avail the selection grade as well as the special grade in accordance with the government order.

6. Considering the facts and circumstances of the case, as well as the arguments advanced by the learned counsel appearing for the writ petitioner as well as the respondents, this Court is of the considered opinion that any order affecting the right of government employee has to be passed only after providing opportunities to the employees concerned. Thus, it is a pre-condition that any order affecting the right of the government employee has to be passed only after issuing show cause notice and after providing opportunities to the employees concerned.

7. The learned counsel for the respondents is unable to establish that such opportunity was provided to the writ petitioner, before passing the impugned order of recovery. In the absence of any such opportunity, the case of the writ petitioner has to be considered.

8. That apart, the eligibility of the writ petitioner/employee has to be scrutinized strictly in accordance with the government order in force in respect of grant of selection grade and special grade. Under these circumstances, this is a fit case for remand and accordingly, the impugned order passed by the 2nd respondent in proceedings in Na.Ka. No.252/A1/2012 dated 04.12.2012 and confirmed by the 1st respondent/appellate authority in Na.Ka. No.356/A.3/2013 dated 12.04.2013 are quashed. The 2nd respondent is directed to issue a show cause notice to the writ petitioner by setting out all the facts and details, within a period of four



weeks, from the date of receipt of copy of the order. On receipt of the show cause notice, the writ petitioner is directed to submit his explanation along with the documents if any to the 2nd respondent, within a period of three weeks from the date of receipt of show cause notice. Thereafter, the 2nd respondent is directed to consider the explanation as well as the government order in force and pass order on merits and in accordance with law, within a period of six weeks therefrom.

9. Accordingly, the Writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The District Elementary Educational Officer,
Theni District.
2. The Assistant Elementary Educational Officer,
Theni, Theni District.
3. The Secretary,
Muthiah Primary School,
Allinagaram, Theni,
Theni District.

+1 CC to .SPL GP SR-67040.

+1 CC to Mr.K.APPADURAI, Advocate SR-66910.

W.P[MD)]No. 9843 of 2013
04.06.2019

CS: (19/06/2019) 3P 6C