

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.09.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 7825 OF 2013

AND

M.P. NO. 2 OF 2013

S.Vivekanandan

.. Petitioner

- Vs -

1. State of Tamil Nadu
rep. By the Secretary to Govt.
School Education Department
Fort St. George, Chennai - 9.
 2. The Director of School Education (Secondary)
College Road, Chennai - 6.
 3. The District Educational Officer
Periyakulam, Theni District.
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the impugned proceedings of the 3rd respondent in Na. Ka. No.788 A1 2003 dated 29.03.2004 and in Na. Ka. No.1876/Aa/2011 dated 16.04.2012 quash the same and direct the respondents to refix the petitioner's salary in the scale of pay applicable to Head Masters from 29.9.1989, Selection Grade Pay from 30.9.1989 and Special Grade from 6.9.99 and refix the petitioner's salary and pension and pay the petitioner the retirement benefits due to the petitioner.

For Petitioner : Mr. V.Selvaraj

For Respondents: Mr. Suresh Kumar, GA

ORDER

It is the case of the petitioner that the petitioner started his career as School Assistant and, thereafter, after a long stint, was promoted and posted as Headmaster, High School on 29.9.1989 and given Selection Grade pay from 30.9.1989 and Special Grade pay from 6.9.99 in the cadre of Head Master, High School.

2. It is the further averment of the petitioner that the date of promotion of the petitioner as Headmaster was refixed as 1.9.1998 by the proceedings of the 2nd respondent dated 16.12.98 and the 3rd respondent refixed the salary vide proceedings dated 5.4.99 against which the petitioner preferred O.A. No.442/1999 before the Tamil Nadu Administrative Tribunal in which interim stay was granted on 11.8.99 and the interim order was extended from time to time. On abolition of the Tribunal, the application was transferred to the file of this Court and renumbered as W.P. No.26074/05. Since the petitioner was due to retire from service on 31.3.04, with scant regard to the order of interim stay granted by the Tribunal, the 3rd respondent, vide proceedings dated 29.3.04, refixed the salary and pensionary benefits of the petitioner based on the orders passed by the 2nd respondent dated 16.12.98.

3. It is further averred by the petitioner that W.P. No.26074/05 was allowed by this Court on 28.2.2011 and the respondents were directed to refund the money to the petitioner, if recovery already was made. Since the said order was not complied with, the petitioner filed Contempt Petition No.463/2012, wherein an order was passed by the 3rd respondent dated 16.4.2012 stating that only a sum of Rs.50,000/-, which was withheld towards recovery of money alone was due to the petitioner. It is the case of the petitioner that a sum of Rs.77,555/- was recovered from his salary and that a sum of Rs.50,000/- payable towards provident fund was withheld for the purpose of recovery on refixation of selection grade pay and special grade pay. Hence, left with no other alternative, the present writ petition has been filed.

4. Learned counsel appearing for the petitioner submits that though the petitioner was paid the selection and special grade pay at the appropriate time, however, without any reason or rhyme, the respondents have sought to refix the pay of the petitioner with effect from the year 1998. The refixation of the pay of the petitioner is per se impermissible and is not substantiated by any documents. It is the further submission of the learned counsel for the petitioner that though the Tribunal had granted interim order, which was in force throughout, till the allowing of the writ petition by this Court in the year 2011, however, without due regard and respect to the order of stay granted by the Tribunal, the 3rd respondent had arbitrarily refixed the pay of the petitioner on his attaining the age of superannuation, which is wholly unsustainable. It is the further submission of the learned counsel for the petitioner that even after this Court allowing W.P. No.26074/05, proper working was not made with regard to the recoveries made and the amounts that are due and payable to the petitioner and without

proper calculation, in view of the contempt petition filed for disobedience of the orders passed by this Court, the respondents have merely said that an amount of Rs.50,000/- alone is to be paid to the petitioner. It is the submission of the learned counsel for the petitioner that the above quantification of the amount is not on the basis of any calculation and in such circumstances, the amount arrived at by the respondents cannot be taken as the amount due and payable to the petitioner. In the above backdrop, it is the submission of the learned counsel for the petitioner that the respondents should be directed to implement the order passed by this Court in W.P. No.26074/05 in letter in spirit by making appropriate calculation on the basis of the selection grade and special grade pay due and receivable by the petitioner on the respective dates as prayed for and on such quantification, order be passed directing the respondents to pay the said amounts due to the petitioner along with the recovery already made and also recalculate the pensionary and other terminal benefits and pay the same to the petitioner along with the arrears.

5. Counter has been filed on behalf of the respondent, which merely reveals that based on the orders of the Hon'ble Supreme Court the case of promotion of the petitioner was revisited and based on the said refixation, order was passed for recovery. The counter merely proceeds on the footing that no recoveries have been made and that the petitioner is not entitled to receive any amount towards the recovered amount. It is further stated that no amount was recovered from the petitioner. Except repeating a parrot like version, the counter does not shed any light on the special grade and selection grade pay to which the petitioner is entitled to. Learned Government Advocate though appeared, however, is not able to assist the Court with any further material to substantiate the claim of the respondents.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

7. The facts in issue are not in dispute. The petitioner was granted selection grade pay in the year 1989 and special grade pay in the year 1999 is not in dispute. Further, the promotion of the petitioner as Headmaster is also not in dispute. The only flimsy ground on which the respondents try to place their case is that in view of the pending litigation before the Supreme Court, in which direction was issued to refix the seniority, the refixation of seniority of the petitioner was carried out and due to the said refixation, necessarily the selection grade and special grade pay of the petitioner was refixed. However, the curious thing to be noted here is that

the matter in which such an order was passed by the Supreme Court, nor the date of such order has not been given in the counter. Though the counter runs to around six pages in which the order of the Supreme Court has been mentioned umpteen number of times, however, the case in which the said order was passed has not been revealed. Further, it is to be pointed out that an overall reading of the entire counter, it only sheds light that the counter is self contradictory. On the one hand, while the counter reveals that no recoveries have been made, however, the other portion of the counter speaks that pursuant to the order of the Supreme Court, refixation has been made and recoveries have been effected. Further, the counter reveals that an amount of Rs.77,555/- has been recovered, though it is countered saying that it is not towards recovery of the amount paid towards selection grade and special grade pay. However, it merely says that due to punishments imposed and erroneous sanction of increments, the said amount has been recovered.

8. When this Court, even in the earlier round of litigation in W.P. No.26074/05 has allowed the petition and directed the respondents to pay the selection grade and special grade pay to the petitioner on the basis of his promotion and also to refund the amount recovered, and the respondents themselves have, in the contempt petition committed that an amount of Rs.50,000/- has been withheld towards the excess amount, which is to be recovered from the petitioner, this Court is at a loss to understand as to how the respondents can sustain the present counter in the second round of litigation. Without adhering to the order passed by this Court in W.P. No.26074/05 and committing contempt and even accepting that amount is due to the petitioner in the contempt, without paying the amounts due to the petitioner and making the petitioner to run from pillar to post to receive his duly entitled amount, is nothing but trying to nullify the order passed by this Court in W.P. No.26074/05. Further, it is to be pointed out that inspite of the order of stay granted by the Tribunal, the refixation has been made by the 3rd respondent flouting the order of interim stay granted by the Tribunal. Further, the order passed by this Court in W.P. No.26074/05 has not been implemented in letter and spirit, but merely sought to be brushed aside by stating in the contempt that only an amount of Rs.50,000/- has been withheld. The act of the respondents is per se contemptuous and calls for stricter action by this Court. However, this Court at the distant point of time is not inclined to resort to the said way of initiating action against the respondents.

9. Further, it is to be pointed out that though the respondents merely say that only an amount of Rs.50,000/- has been withheld towards recoveries to be made, however, quantification as to the recoveries to be made and the

recoveries already made have not been tabulated. Merely coming out with a figure that only a sum of Rs.50,000/- has been withheld would not suffice to hold that the petitioner is only entitled to the said sum. To put it more bluntly, the entire counter of the respondents has nothing in it to say that the respondents have refixed the petitioner's pay based on some materials, which are bona fide in nature. The refixation has not been justified by the respondents looked at from any angle. In the said circumstances, this Court is of the considered view that the prayer as sought for by the petitioner deserves to be allowed.

10. For the reasons aforesaid, this writ petition is allowed and the respondents are directed to rework the calculation by refixing the pay of the petitioner in selection grade and special grade in the post of Headmaster during the year 1989 and 1999 and pay the dues to which the petitioner is legally entitled to based on the orders passed by this Court in W.P No.26074/05. The petitioner shall be provided with a calculation chart as to how the amount arrived at is worked out. The whole exercise of computation of the amount shall be made taking into account the recoveries made and the amount withheld and the amount towards the terminal benefits and pensionary benefits shall be calculated and paid to the petitioner within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Asst.Registrar

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Sub Asst. Registrar

To

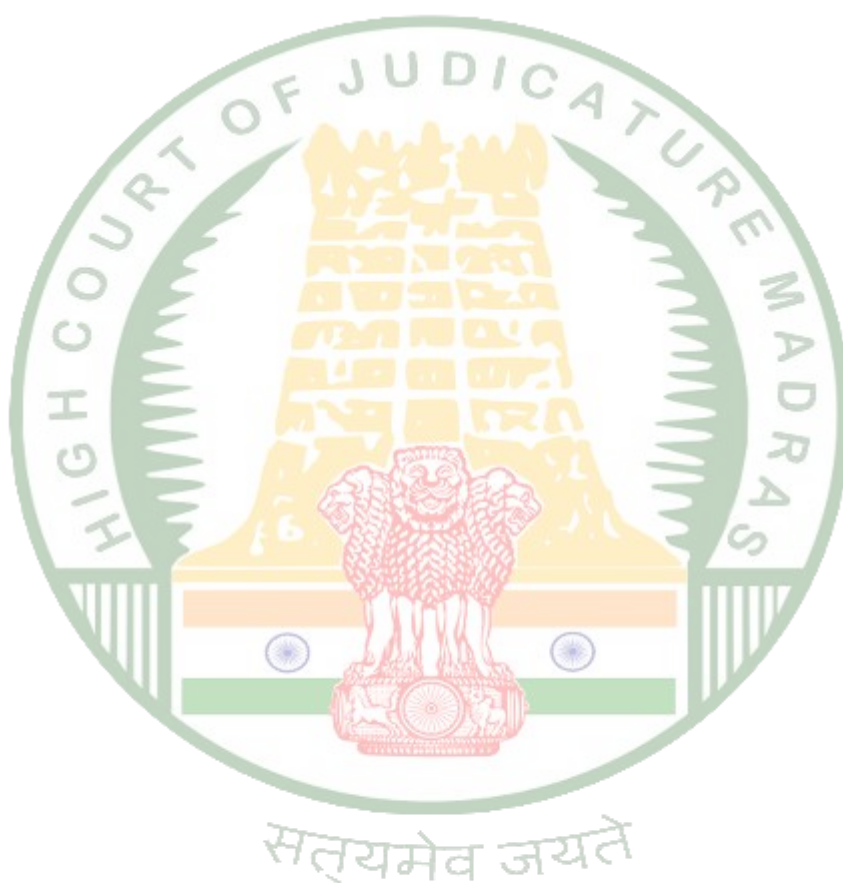
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