

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.2318 of 2014

and

MP No.1 of 2014

T.K. Rajendran

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariat,
Chennai - 09.

2. The Director of School Education,
Chennai - 06.

3. The Chief Education Officer,
Coimbatore & District.

4. Employees Regional Director,
Directorate of School Education,
Chennai - 06.

5. Finance Control Officer,
Directorate of School Education,
Chennai - 06.

6. The Head Master,
Narasimmanpalayam High School,
Coimbatore District.

7. The Head Master,
Vellamadaai Government Higher Secondary School,
Coimbatore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the entire records connected with the proceedings of the third respondent in Na.Ka.No.3355/Aa-3/2013, dated 05.04.2013 and O.Mu. No.2108/A4/2012 dated 13.07.2012 and set aside the same, consequently direct the respondents to pay the petitioner the travelling allowance for May 2010, May 2011 and from 21st April 2013 to 31st May 2013 within the time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.D.A.Senthamani
For Respondents : Mr.S.Suresh Kumar,
Government Advocate.

ORDER

(The case has been heard through video conference)

This writ petition has been filed to set aside the order issued by the third respondent in Na.Ka. No.3355/AA-3/2013, dated 05.04.2013 and O.Mu No.2108/A4/2012, dated 13.07.2012 and for consequential direction to the respondents to pay the travelling allowance for May 2010, May 2011 and from 21.04.2013 to 31.05.2013.

2. The case of the petitioner is that he is a visually challenged person and was appointed as Teacher and is entitled for Travelling allowance and accordingly he was paid travelling allowance for the period December 2007 to April 2010. Thereafter, the said allowance was not paid for the month of May 2010, hence, he submitted a representation to the 3rd respondent, who in turn rejected his request vide proceedings O.Mu No.2108/A4/2012, dated 13.07.2012 and communicated the same in Na. Ka. No.3355/AA-3/2013, dated 05.04.2013 by stating the reasons that the said allowance is payable only during working period and not during vacation. Further, it is averred that persons similarly placed have received the said payment during the period of vacation also. Aggrieved over the same, this writ petition has been filed.

3. Learned counsel for the petitioner submitted that as per G.O. No.667, Finance (PC), dated 27.06.1989, the petitioner is entitled for payment of Travelling allowance as the same was paid to persons similarly placed like the petitioner. However,

the respondent, by sheer non application of mind, has passed the impugned orders which is liable to be set aside. Thus, he prays for setting aside the impugned orders and for consequential direction for payment of travelling allowance to the petitioner within a time frame.

4. Per contra, learned Government Advocate appearing for the respondents submits that the said allowance was paid only on monthly basis and the petitioner is not entitled to claim travelling allowance during the vacation period. The petitioner misconstrued the said allowance as transport allowance as the aforesaid allowance was paid as conveyance allowance. Accordingly, the respondents have rightly rejected the request of the petitioner. Further reiterating the counter he would submit that if the petitioner is really aggrieved, he ought to have had his grievance redressed before the higher authorities and it is not open to the petitioner to directly approach this Court by invoking Article 226 of the Constitution of India, which is not maintainable.

5. Heard the rival submissions of the learned counsel on either side and perused the materials placed on record.

6. Admittedly, it is not in dispute that the petitioner is a visually challenged person and he is entitled to claim travelling allowance as per G.O. Ms. No.667, dated 27.06.1989. A perusal of the Government Order reveals that the conveyance allowance is payable to assist the blind and orthopedically handicapped persons to attend their office. It transpires from the affidavit that the petitioner was paid the said allowance earlier during vacation period also. Further, it could be seen that he received the said allowance during quarterly and half yearly vacations as also during the summer vacation i.e., May 2008 and May 2009.

7. However, it is the stand of the respondents that during May 2010, the school remained closed for summer holidays. It is the further stand of the respondent that if the petitioner is really aggrieved he must approach the Government by whom the scheme was originally introduced. The relevant paragraphs of the counter affidavit are extracted hereunder:

4. It is submitted that the Pay commission recommended conveyance allowance, taking into account the difficulties faced by the physically challenged employees to incur considerable expenditure for attending offices. It shows that it is a compensatory allowance to such persons to attend institution for the specific purpose. The petitioner did not practically attend the school May 2010 nor was called upon to attend the school as it remained close

for summer holidays. Factually he has not attended the school. He was informed of this in the proceedings dt. 05.04.2013 of the 3rd respondent. Yet he is aggrieved of this and so impugned the said proceedings to derive undue financial benefit through law course.

7. It is submitted that Para 7 of the Affidavit are denied (In the impugned proceedings dated 05.04.2013 adducing the reasons thereon. Had he been dissatisfied, he should have represented to the government by whom the scheme was originally introduced. On the other hand, he straightaway knocked the doors of this Honorable High Court. As such the writ is not maintainable.

8. The grievance of the petitioner is that he has fully satisfied the conditions imposed in G.O. Ms. No.667, dated 27.06.1989, and the same reads as under :-

2. The Government accept the recommendation of the Pay Commission and direct that conveyance allowance at five per cent of basic pay subject to a maximum of Rs.50 per month, be sanctioned to the blind and orthopedically handicapped State Government employees, subject to the following conditions :

- i) An Orthopedically handicapped employee will be eligible for the above conveyance allowance only if he has a minimum of forty percent permanent partial disability of either upper or lower limbs or fifty percent permanent partial disability of both upper and lower limbs together.
- ii) The allowance will be granted to the employee on the recommendation of the Head of Orthopaedic Department of a Government Hospital.
- iii) The allowance is admissible to employees who are totally blind and those having vision less than 3/60 or field vision less than 10 in both eyes.
- iv) The allowance will be granted to the blind employees on the recommendation of the Head of Ophthalmological Department of a Government Hospital.
- v) The allowance is not admissible to one-eyed employees and

vi)The allowance is not payable during leave (except casual leave), joining time or suspension.

9. A composite reading of the Government Order as also the impugned order passed by the respondent reveals that no reasons, much less, proper reasons have been assigned in the impugned order passed by the respondents as to the non-entitlement of the petitioner for receiving the conveyance allowance during the vacation period. Further, it is also borne out by records that the petitioner has received the conveyance allowance during the vacation period as well, which is not disputed by the respondents. The impugned order has been passed without considering the entitlement of the petitioner in the light of the G.O. No.667, dated 27.06.1989. Therefore, it could be safely concluded that the impugned orders have been passed mechanically without proper application of mind to G.O. Ms. No.667. A proper consideration of G.O. Ms. No.667 would invariably lead to the conclusion that the petitioner is entitled for receipt of conveyance allowance for May 2010 and also the subsequent period of summer vacation during the subsequent years.

10. Further, it is to be pointed out that the contention of the learned Government Advocate that the amount paid to the petitioner is travelling allowance and not conveyance allowance and, therefore, the petitioner is not entitled for the same is nothing but an attempt on the part of the respondents to split the hair contending that travelling allowance and conveyance allowance are not one and the same. However, it is to be pointed out that the allowance given to the petitioner is for using conveyance to travel to the place of his job and, therefore, the allowance is a composite one taking conveyance and travelling within its fold and, therefore, the contention of the learned Government Advocate to the contra does not merit acceptance.

11. For the reasons aforesaid, this Court is of the considered view that the impugned orders are liable to be quashed and accordingly, the orders issued by the third respondent in Na.Ka. No.3355/AA-3/2013, dated 05.04.2013 and O.Mu No.2108/A4/2012, dated 13.07.2012 are hereby quashed. The respondents are directed to consider the claim of the petitioner in the light of the G.O. Ms.No.667, dated 27.06.1989 and issue orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands allowed with the aforesaid directions. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar

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Sub Assistant Registrar

To

1. The Chief Secretary,
State of Tamil Nadu,
Secretariat,
Chennai - 09.

2. The Director of School Education,
Chennai - 06.

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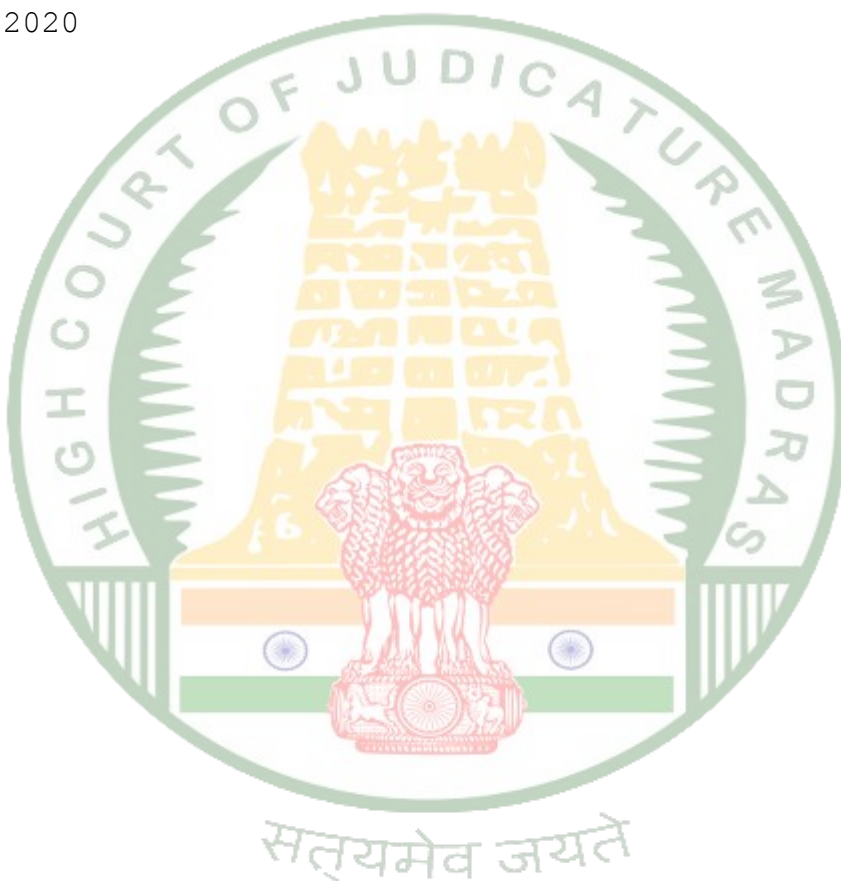
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C.C. to The Government Pleader SR.NO.36313

W.P.No.2318 of 2014

KJ(CO)
RRI 21/12/2020



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