

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.7568 of 2017

K. Varada Pillai

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by the Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of Elementary Education,
College Road, Chennai - 600 009.

3.The District Elementary Educational Officer,
Tiruvallur District, Tiruvallur.

4.The Regional Joint Director,
Treasury Accounts Department,
Nandanam, Chennai - 600 035.

5.The Treasury Officer,
District Treasury, Tiruvallur, Tiruvallur District.

6.The Assistant Elementary Educational Officer,
Thiruvelangadu Panchayat Union,
Thiruvelangadu, Tiruvallur 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 records of the fourth respondent in relation to his proceedings issued in Na.Ka.No.00046/2017/A1, dated 01.03.2017 and quash the same and consequential direction to the respondents to allow the petitioner to get 50% pay of selection grade scale of pay of primary school headmaster, as pension continuously.

For Petitioner	:	Mr.R. Saseetharan
For RR 1 to 3 and 6	:	Mrs.P. Kavitha, Government Advocate
For RR 4 and 5	:	Mr.J. Ramesh Additional Government Pleader

O R D E R

This writ petition has been filed by the writ petitioner seeking to call for the records of the fourth respondent/The Regional Joint Director in relation to his proceedings issued in Na.Ka.No.00046/2017/A1, dated 01.03.2017, quash the same and for consequential direction to the respondents to allow the petitioner to get 50% pay of selection grade scale of pay of Primary School Headmaster as pension continuously.

2. According to the writ petitioner, he was initially appointed as Higher Grade Teacher in the Chittoor District Board Elementary School, Aswa Devendrapuram on 10.10.1947. Subsequently, he was promoted as Headmaster and posted at Elementary School Uppam Kandigai, the then Chengalpattu District. In the year 1966, after training as provided by the Government, he was upgraded as Secondary Grade Teacher on 14.06.1966 and posted as Headmaster at Thiruvelangadu Elementary School. The District Board School was abolished in the year 1964 and in its place, Panchayat Union Schools are established. Thereafter, he was posted as Primary School Headmaster on 01.10.1979 at Panchayat Union Elementary School, Tiruvallur District and served as Headmaster of the said school till 30.06.1986 and the Panchayat Union Teacher became Government Servant with effect from 01.06.1981 and he is brought under the control of the State Education Department. Thereafter, he retired from service as Elementary School Headmaster on 30.06.1986 .

3. According to the writ petitioner, the respondents have passed the impugned recovery order and to re-fix the scale of pay and pensionary benefits to the writ petitioner and the same is illegal on the ground that the respondents has not provide any opportunity to the writ petitioner, while passing the impugned order and prays to re-fix the scale of pay and pensionary benefits. Insofar as the recovery order is concerned, on 19.07.2012, the petitioner's scale of pay has already been revised and pensionary benefits were paid to the writ petitioner. In the light of the decision of the Hon'ble Supreme Court in the case of The State of Punjab and Others v. Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334, the respondents have no right to recover the aforesaid amount, after retirement of the writ petitioner from the service.

4. The learned Government Advocate appearing for the respondents would submit that as the Department has wrongly fixed the scale of pay to the writ petitioner, based on the

report of the Regional Joint Director, Treasury Accounts Department, Nandanam, Chennai - 600 035, by the impugned order, the fourth respondent had re-fixed the pensionary benefits and directed that the alleged amount to the writ petitioner for a total amount of Rs.6,02,146/- has been paid as excess sum wrongly by way of pension and directed him to refund the said amount to the Government Account. Therefore, there is no illegality or infirmity in the impugned order passed by the fourth respondent.

5. Heard Mr.R.Saseetharan, learned counsel appearing for the petitioner and Mrs.P.Kavitha, learned Government Advocate appearing for the respondents 1 to 3 and 6 and Mr.J.Ramesh, learned Additional Government Pleader appearing for the fourth and fifth respondents and perused the materials available on record.

6. The impugned order passed by the fourth respondent suffers from legal infirmity on the ground that it violates the principles of natural justice, by not providing an opportunity to the writ petitioner to re-fix the scale of pay, already drawn by the writ petitioner in the year 2012. The second limb of the argument of the writ petitioner is that, insofar as the recovery order passed by the respondent, is illegal and beyond its jurisdiction. In support of his contention, he relied upon the decision of the Hon'ble Supreme Court in the case of The State of Punjab and Others v. Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334, wherein, it has been held in Para No.18 (ii) as follows:

18. (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

7. Thus, the aforesaid judgment of the Hon'ble Apex Court is squarely apply to the facts of the present case, insofar as the recovery order passed by the respondent.

8. Therefore, the respondent has no power to recover the excess amount already paid to the writ petitioner and the same is not permissible as per Para No.18(ii) of the said judgment extracted supra. Hence, the impugned recovery proceeding is quashed.

9. In view of the aforesaid reasons, the impugned order passed by the fourth respondent in Na.Ka.No.00046/2017/A1, dated 01.03.2017, is hereby quashed and consequently, the writ petition is allowed with a liberty to the respondent to proceed with the re-fixation of the scale of pay and consequently, to revise the pensionary benefits after providing affordable

opportunity of hearing to the writ petitioner alone and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

msm

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 600 009.
 - 2.The Director of Elementary Education,
College Road, Chennai - 600 009.
 - 3.The District Elementary Educational Officer,
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District Treasury, Tiruvallur, Tiruvallur District.
 - 6.The Assistant Elementary Educational Officer,
Thiruvelangadu Panchayat Union,
Thiruvelangadu, Tiruvallur District.
- +1 CC to Mr.R.Saseetharan, Advocate sr 11097.
+1 CC to Govt. Pleader sr 10864.

W.P.No.7568 of 2017

SP(27/02/2020)