



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.19283 of 2019 and
WMP(MD) Nos.15704 to 15706 & 15708 of 2019

G.Saraswathi

Petitioner

Vs

1. The Chief Educational Officer
Thanjavur
Thanjavur District
2. The District Elementary Education Officer
Elementary Education
Thanjavur
3. The Block Educational Officer
Ammapettai
Thanjavur District
4. The Secretary
Government Aided Primary School
Devarayanpettai
Ammapettai Block
Thanjavur District

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in his proceedings Na.Ka.670/A3/2019 dated 31.07.2019 and quash the same and consequently direct the respondents herein to permit the petitioner to join her duties and discharge her duties as a teacher and also to pay the salary to the petitioner.

For Petitioner : Mr.B.Jameel Arasu

For Respondents : Mr.Karuppasamy
Government Advocate



O R D E R

This Writ Petition has been filed to call for the records pertaining to the impugned order passed by the third respondent in his proceedings Na.Ka.670/A3/2019 dated 31.07.2019 and quash the same and consequently direct the respondents herein to permit the petitioner to join her duties and discharge her duties as a teacher and also to pay the salary to the petitioner.

2. By Government Order in G.O.Ms.No.155 (School Education) Department dated 03.10.2002, the secondary Grade Teachers with B.Ed qualification in the aided Schools were absorbed with the condition that they have to undergo psychology training and on completion of the training, their services will be regularized with effect from their date of appointment. There was a further condition that the teachers, whose services were regularized are not entitled to monetary benefits from the date of initial appointment. The condition in the said Government Order came to be upheld by this Court, when similarly placed teachers had filed a Writ Petition in W.P.No.19821 of 2003. Through the impugned order dated 31.07.2019, the respondents herein had ordered for recovery of the excess salaries paid between the period 08.08.1996 to 31.07.2019.

3. The learned counsel for the petitioner submitted that the impugned order is liable to be set aside since no prior notice was issued before the recovery was made. He would also submit that when identically placed teachers had challenged the recovery order before this Court, the Writ Petitions came to be allowed by having the impugned order of recovery set aside and therefore the petitioner is also entitled for the same relief.

4. The learned Government Advocate for the respondents submitted that the petitioner is not eligible for any monetary and other benefits from the date of her initial appointment. In view of the judgment of this Court, there is no irregularity in the order of recovery of the excess payment made. The learned Government Advocate also submitted that the petitioner is not entitled to the excess payment already received by her, which would amount to injustice.

5. I have given careful attention to the submissions made by the respective counsel.

6. It is not in dispute that prior to the issuance of the impugned order, the petitioner herein was not put on notice. When the impugned recovery pertains to the period commencing from



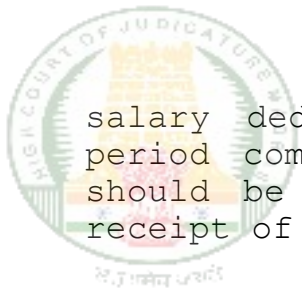
08.08.1996 onwards, it would have been just and proper on the part of the respondents to have atleast called for objections from the petitioner before any recovery was sought to be made.

7. The learned counsel for the petitioner had also submitted that as against the entitlement for the salaries, Writ appeal is also pending before this Court in W.A.No.272 of 2017. While that being so, it would have been more appropriate for the respondents to have sought for explanation from the petitioner before the recovery order was passed. In the absence of such prior show cause notice, the impugned order of recovery itself would be in violation of principles of natural justice and therefore this Court would be justified in invoking its extra ordinary powers under Article 226 of the Constitution of India and interfere with the impugned order.

8. It is also brought to the notice of this Court that after the petitioner had challenged the impugned recovery order dated 22.08.2019, this Court by order dated 05.09.2019 had entertained the writ petition and passed the interim order of stay of the recovery under the impugned order. The interim order was still in force. While that being so, the respondents had chosen to revise the petitioner's salary based on the impugned order, which prompted this Court to issue another clarification vide order dated 16.10.2019, directing the petitioner to pay monthly salary without deducting the amounts under the impugned recovery order. However, the learned counsel would submit that the respondents have not acted upon the order of this Court. When this Court had earlier passed orders of interim stay on 05.09.2019, as well as subsequent interim order on 16.10.2019, the respondents were represented by the Government Lawyers and therefore they cannot pleaded ignorance of the orders of this Court. As such, the revision of the petitioner's pay scale and the consequent recovery itself would amount to wilful disobedience of this Court's earlier orders.

9. In view of this illegal action on the part of the respondents, it would be appropriate to direct the respondents to repay the petitioner's all the recovered amount pursuant to the interim orders of this Court dated 05.09.2019, till date.

10. In the light of all foregoing reasons, the impugned order of recovery passed on 31.07.2019 by the third respondent is hereby quashed and the matter is remitted back to the third respondent herein, who shall be at liberty to issue fresh orders after giving sufficient prior opportunity to the petitioner to put forth her objections based on the proposed recovery. There shall be



salary deducted from the petitioner's remunerations between the period commencing from 05.09.2019 to till date and such payment should be made within a period of four weeks from the date of receipt of copy of this order.

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11. With the above observations and directions, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

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2. The District Elementary Education Officer
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4. The Secretary
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+1 CC to M/s.SPL.GP (SR-721[F] dated 08/01/2020)

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-780[F] dated 08/01/2020)

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