



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2020

DELIVERED ON: 27.07.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.17430 of 2014
and
MP(MD).Nos.1 and 2 of 2014

G. John Bosco : Petitioner

Vs.

1.The District Elementary Educational Officer,
Kanyakumari District,
Nagercoil - 629 001.

2.The Additional Assistant Elementary Educational Officer,
Kuzhithurai,
Kuzhithurai Post,
Kanyakumari District 629 163.

3.The Correspondent,
St. Wencaslaus R.C. Primary School,
Alamparai, Thickerichi,
Kanyakumari District - 629 168.

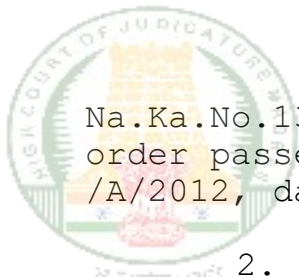
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.1393/A/2012, dated 28.12.2012, the consequential impugned order passed by the 2nd respondent in the proceedings in Na.Ka.N.1393 /A/2012, dated 14.02.2013 and quash the same.

For petitioner : Mr. S. Bharathy Kannan
For R1 and R2 : Mr. S. Shanmugaselvam,
Additional Government Pleader for R1 & R2
For R3 : No appearance

ORDER

This Writ Petition is filed to quash the impugned order passed by the second respondent in his proceedings in



Na.Ka.No.1393/A/2012, dated 28.12.2012, the consequential impugned order passed by the 2nd respondent in the proceedings in Na.Ka.N.1393/A/2012, dated 14.02.2013.

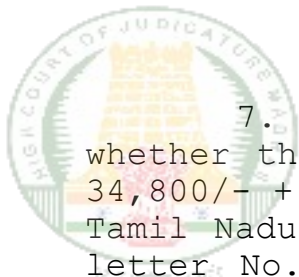
2. The petitioner was appointed as a secondary grade teacher on 14.02.1989 at St.Mary's Primary School, Melpalai and he had the qualification of B.A., (History) M.A., (History) and B.Ed., He was awarded selection grade and the special grade for his post of secondary grade Teacher on 02.08.1999 and 04.06.1999 respectively. Thereafter, the petitioner was promoted as a primary school Headmaster on 04.06.1999 and on 05.06.2011, he was transferred to the 3rd respondent school and working in the said station till now. Admittedly, the pay scale for the post of primary school Headmaster in the selection grade was fixed for the petitioner for the period from 02.08.1999 to 04.06.2009 in the pay scale of Rs.6,500/- - 200/- 10,500/-. Thereafter, once again the petitioner was promoted as primary school Headmaster with effect from 04.06.2009 and his pay scale was refixed as Rs.6,500/- - 200 - 20,5000 with effect from 04.06.2009. As per the above refixation in the post of primary school Headmaster the petitioner's pay has been fixed as Rs.9,300/- - 34,800/- + 4,500/- (Grade pay) by increasing 3% personnel by applying Tamil Nadu Revised Scales of Pay Rule, 2009. Accordingly, this respondent vide his letter dated 05.01.2011 had entered the above pay scale of the petitioner in his service register.

3. The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that awarding of Selection Grade / Special Grade in respect of Primary School Headmaster in and by which clubbing his period of service, in the post of Secondary Grade Teacher is impressible in law and wrongly his service was counted in the post of secondary Grade School Teacher was taken into consideration, resulted in awarding of Selection Grade and hence, the second respondent has ordered for refixation of his salary and also ordered for recovery of lumpsum amount viz., Rs.43,224/-.

4. The further contention of the learned Additional Government Pleader is that for the purpose of awarding of Selection Grade / Special Grade in the post of Primary School Headmaster, the service in the post of Secondary Grade teacher cannot be counted and hence, the order of refixation and recovery passed by the respondents 1 and 2 does not call for any interference.

5. The learned counsel appearing for the petitioner would submit that the order could if at all be perspective, cannot be retrospective and hence, no recovery could be made.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2.



7. The main crux of the issue in this Writ Petition is that whether the petitioner is eligible for the pay scale of Rs.9,300/- 34,800/- + 4,500/- (Grade Pay) by increasing 3% personnel as per the Tamil Nadu Revised Scales of Pay Rule, 2009. The Government vide letter No.23373/S/2011-2 (Personnel Administrative Reforms), dated 09.08.2011 clearly informed that for awarding the selection grade / special grade in the promotional post for a Government servant then his previous service period at the immediate subordinate post should not be counted for in the said promotional post. In the petitioner's case his promotional post is primary school Headmaster and his immediate subordinate post is the secondary grade teacher. Hence, for forwarding the selection grade / Special grade in the post of primary school Headmaster his period of stint in the post of secondary grade teacher should not be counted.

8. In petitioner's case while awarding the selection grade to his promotional post of primary school headmaster with effect from 01.06.2009, his service period in the subordinate post of secondary grade teacher has been included by the third respondent. On the strength of the wrongly fixing of pay scale to the petitioner by the third respondent this respondent wrongly approved the pay scale of the petitioner of Rs.9,300/- 34800 + 4500/- (Grade Pay) by increasing 3% personnel by applying Tamil Nadu Revised Scales of Pay Rule, 2009 which is nothing but illegal. As a result, the respondent on 09.02.2013 sent a letter to the third respondent that the pay scale of the petitioner has been wrongly fixed and directed to re-fix the pay scale of the petitioner with effect from 04.06.2009 as per the Government Letter No.23373/S/2011-2 (Personnel Administrative Reforms), dated 09.08.2011 and directed him to recover the wrongly paid salary to the petitioner. The respondent, vide proceedings in Na.Ka.No. 1393/A/2012, dated 14.02.2013 had cancelled the re-fixation of the monthly salary of the petitioner in the above pay scale with effect from 01.07.2009.

9. It is pertinent to note that as per the prevailing rules if any government servant has been wrongly awarded any salary and other allowances, the government would always take recovery proceedings and the said government servant is duty bound to remit the excess rupees to the government Exchequer.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

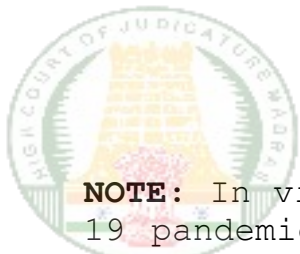
Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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2.The Additional Elementary Educational Officer,
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Alamparai, Thickurichi,
Kanyakumari District - 629 168.

ORDER MADE IN
WP (MD).No.17430 of 2014 and
MP (MD).Nos.1 and 2 of 2014
27.07.2020

trp
SDS (03.08.2020) 4P-4C