BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **03.11.2020**
CORAM:
THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
W.P.(MD)No.3269 of 2014

A.Radhakrishnan ... Petitioner

Vs.

1.The Principal Accountant General (A&E)
Tamil Nadu,
Chennai.18.

2.The Assistant Elementary Educational Officer,
Madurai South,
South Chithirai Street,
Madurai-1. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent in No.PrAG (A&E) PEN P22/32207187/1/R 2207187/108 dated 23.12.2013 and quash the same and direct the 1st respondent to fix the last drawn salary of the petitioner as Rs.31,440/- and settle his pension.

For Petitioner : Mr.C.Godwin
For R2 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
For R1 : Mr.P.Gunasekaran

ORDER

The order of revision of scale of pay and recovery in proceeding dated 23.12.2013, is under challenge in the present writ petition.

2.The petitioner was working as a Primary School Headmaster in Ayira Vaisya Primary School, Veliambalam, Madurai, from 08.06.1987 and selection grade pay was granted to him on 08.06.1997 and special grade pay with effect from 08.06.2007. The petitioner has attained the age of superannuation and retired from service on 28.02.2013. He continued in service on reemployment basis till 31.05.2013.

3.The learned counsel appearing on behalf of the writ petitioner states that the scale of pay of the writ petitioner was considered and the pension was fixed taking note of last pay drawn paid to the writ petitioner. In other words, pension was fixed based on the last drawn pay and other benefits were also settled. The impugned order of recovery is issued by the first respondent in proceeding dated 23.12.2013 stating that the grant of increment an award of special grade on 08.06.2007 is not admissible, since pay of the writ petitioner had already been restricted to the scale of pay of Rs.6,500 - 200 - 10,500 on 01.08.2005 as per G.O.160.

4.The learned counsel appearing for the petitioner is of the opinion that the order of recovery passed after retirement, is unsustainable. The petitioner has not committed any act of misrepresentation and his pension was fixed based on the last drawn pay and accordingly, the impugned order is liable to be scraped.

5.The learned counsel appearing on behalf of the second respondent disputes the contention by stating that the error kept in regarding the fixation is sought to be rectified and such a course of action cannot be held as untenable. Irregularly the increment was granted to the writ petitioner and therefore, the first respondent passed an order restricting the scale of pay as admissible in the Government Order.

6.This Court is of the considered opinion that the special grade pay along with the increment was admittedly sanctioned to the writ petitioner with effect from 08.06.2007. Therefore, the petitioner retired from service on 28.02.2013. After the retirement, the said impugned order has been passed imposing recovery. In this regard, the Hon'ble Supreme Court also categorically held that the excess amount if any paid, cannot be recovered from the retired employees. The increment in the special grade pay was sanctioned in the year 2007 and the impugned order has been passed in the year 2013. This apart, the fixation made erroneously can be rectified at an earlier point of time. However, the recovery cannot be imposed in the absence of any misrepresentation on the part of the employee. In the present case, there is no misrepresentation established. Further, the petitioner also has not given an undertaking any such recovery of excess payment.

7.This being the factum, the respondents are directed to revise the scale of pay of the writ petitioner, as per the Government Order and Pay Rules in force. In other words, the error occurred in fixation can be rectified by the competent authority and admissible pensionary benefits are to be paid to the writ petitioner. Further the excess payment already paid to the writ petitioner cannot be recovered. Thus, the impugned order passed by the first respondent in proceeding No.PrAG(A&E) PEN P22/32207187/1/R 2207187/108, dated 23.12.2013, is quashed to the extent of recovery imposed and the respondents are directed to rectify the mistake in fixation of pay, if any occurred. Accordingly, this writ petition stands allowed in part. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Principal Accountant General (A&E)
Tamil Nadu,
Chennai.18.

2.The Assistant Elementary Educational Officer,
Madurai South,
South Chithirai Street,
Madurai-1.

+1 CC to SPL GP (SR-21085[F] dated 04/11/2020)

+1 CC to Mr.C. GODWIN, Advocate (SR-21040[F] dated 04/11/2020)

W.P.(MD)No.3269 of 2014
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