

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2589 of 2021

and

W.M.P.No.2924 & 2925 of 2021

(Heard through VC)

R.Boominathan

.. Petitioner

-vs-

1.The Director of Elementary Education,
College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Tiruppur, Tiruppur District.

3.The District Educational Officer,
Tiruppur, Tiruppur District.

4.The Block Educational Officer,
Kankayam Block,
Kankayam, Tiruppur District.

5.The Treasury Officer,
Sub Treasury,
Kankayam, Tiruppur District.

.. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the Respondents in relation to the proceedings issued in Na.Ka.No. 012605/E1/2015 dated 11-8-2016 issued by the 1st respondent and in Na.Ka.No.287/2020/A1 dated 27-10-2020 and dated 21-11-2020 issued by the 4th respondent and consequential proceedings issued in Na.Ka.No.7799/E3/2020 dated 8-12-2020 issued by the 2nd respondent and quash the same and to restore the incentive increments granted for B.Ed qualification in favour of deceased Government servant P.Angulakshmi with consequential benefits and to release the salary for encashment of earned leave and amount of Special Provident Fund due to the service of the deceased Government servant P.Angulakshmit to the petitioner with 18% interest per annum.

For Petitioner : Mr.R.Saseetharan

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents : Mr.P.Raja
Government Advocate

O R D E R

The petitioner has come up with this writ petition to quash the proceedings issued in Na.Ka.No.012605/E1/2015 dated 11.08.2016 issued by the 1st respondent and in Na.Ka.No.287/2020/A1 dated 27.10.2020 and dated 21.11.2020 issued by the 4th respondent and consequential proceedings issued in Na.Ka.No.7799/E3/2020 dated 08.12.2020 issued by the 2nd respondent and to restore the incentive increments granted for B.Ed qualification in favour of deceased Government servant P.Angulakshmi with consequential benefits and to release the salary for encashment of earned leave and amount of Special Provident Fund due to the service of the deceased Government servant P.Angulakshmit to the petitioner with 18% interest per annum.

2. Mr.P.Raja, learned Government Advocate takes notice on behalf of the respondents.

3. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, his wife, who is the deceased Government servant died on 29.06.2020 and the order of recovery has been passed on 27.10.2020.

5. When the matter is taken up for hearing, Mr.P.Raja, learned Government Advocate would submit that an erroneous fixation has been done by the respondents and they may be permitted to rectify the error committed by them in the fixation of pension.

6. Permission sought by the respondents for re-fixation of pension cannot be allowed for the reason that in the event of recovery or re-fixation, the employee, whether in service or retired, needs to be heard, which is not possible in this case, because the petitioner's wife is no more and there is no possibility of getting an explanation from the deceased person. Moreover, the question of recovery as well as re-fixation is not permissible as per Rule 54(B)(2) of Fundamental Rules:

"54-B(2). Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for

that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid."

7. It is needless to mention that in case an employee is dead, the entire proceeding will come to an end and no further disciplinary proceedings can be proceeded with. Holding that it is impermissible for the respondents to recover or re-fix the pension after the demise of the employee, the writ petition is Allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rsi

To

- 1.The Director of Elementary Education,
College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
Tiruppur, Tiruppur District.
- 3.The District Educational Officer,
Tiruppur, Tiruppur District.
- 4.The Block Educational Officer,
Kankayam Block,
Kankayam, Tiruppur District.
- 5.The Treasury Officer,
Sub Treasury,
Kankayam, Tiruppur District.

+1cc to Mr.R.Saseetharan, Advocate SR.No. 13599
+1 cc to Government Pleader Sr.No. 14188

W.P.No.2589 of 2021
and

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A.SK(05.07.2021)