



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.14650 of 2009
and M.P.No.2 of 2009

K.CHINNAPPAN
HEADMASTER (RETIRED),
ADI DRAVIDAR WELFARE PRIMARY SCHOOL,
THOLLAR, THITTAGUDI TALUK,
CUDDALORE DISTRICT. ... PETITIONER

Vs.

- 1 THE GOVERNMENT OF TAMILNADU
REP. BY THE SECRETARY. TO GOVT.,
ADI DRAVIDAR AND TRIBAL WELFARE DEPT.,
FORT ST. GEORGE, CHENNAI-9.
- 2 THE DIRECTOR OF ADI DRAVIDAR
AND TRIBAL WELFARE, CHEPAUK CHENNAI-5.
- 3 THE DISTRICT ADI DRAVIDAR
AND TRIBAL WELFARE OFFICER,
CUDDALORE DISTRICT, CUDDALORE.
- 4 THE ACCOUNTANT GENERAL,
TEYNAMPET, CHENNAI-18.
5. THE SECRETARY TO GOVERNMENT,
SCHOOL EDUCATION DEPT.,
FORT ST. GEORGE,
CHENNAI-9. ... RESPONDENTS

(On suo motu this Court impleaded 5th respondent as party in the writ petition by order dated 1.12.2021)

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd and 4th respondent in relation to the proceeding issued in Na.Ka.W7/73438/2000 dt.12.4.01 and Pa.Mu.Wa/7093/2004 dated 31.1.2004 issued by the 3rd respondent and in No.AG (A&E) PEN PO9/3/C38-940/RTD/2004-2005/7006 dt.5.11.2004 issued by 4th



respondent and quash the same and issue a consequential direction to the respondents to release the amount of Rs.2,08,164/- recovered from the amount of gratuity with interest @ 18% per annum and restore the pay of the petitioner at Rs.1760/- in the scale of pay of Rs.1640-2900 in the selection grade scale of pay of primary school Headmaster w.e.f.1.6.88 with consequential benefits and revise the pension and pay the arrears of pension to the petitioner.

For Petitioner : Mr.R.Saseetharan
For Respondents 1 to 3 & 5 : Mr.T.Arunkumar, A.G.P.
For Respondent No.4 : Mr.V.Vijayshankar

O R D E R

According to the petitioner, the petitioner was entered into service in the department of Adhi Dravidar and Tribal Welfare as Secondary Grade Teacher in Harijan Welfare School on 9.9.1971. The post of Secondary Grade Teacher, Primary School Headmaster and Middle School Headmaster were treated as equal cadre on the ground of identical scale of pay. As per G.O.Ms.No.666 dated 27.6.1989, the scale of pay awarded to the post of Primary School Headmaster as 1400-2600 (S.G. 1640-2900) (Spl.G.2000-3200) and Scale of Pay awarded to the post of Secondary Grade Teacher as 1200-2040 (S.G.1400-2600) (Spl.G.1640-2900). In view of the aforesaid G.O., Primary School Headmaster post has become a promotional post and the feeder category is Secondary Grade Teacher. The Director of Elementary Education in his proceedings, dated 17.2.1990 has directed that all the persons who are holding the post of Primary School Headmaster on 1.6.1988 are deemed to have been appointed as Primary School Headmaster with effect from 1.6.1988. The petitioner was promoted as Primary School Headmaster on 3.6.1995 as per seniority. On 1.6.1988, the petitioner's pay was fixed in the post of Secondary Grade Teacher at Rs.1500/- whereas his juniors in the cadre of Secondary Grade Teachers who were holding the post as on 1.6.1988 were paid Selection Grade Pay of Rs.1640 -2900 in the post of Primary School Headmaster by counting their services rendered as Secondary Grade Teacher and Primary School Headmaster by applying G.O.Ms.No.1381. In order to rectify the pay anomaly and to step up the pay of the seniors to the level of juniors, the second respondent by his proceedings, dated 12.7.1989 has directed that since no seniority has been followed for filling up the post of Primary School Headmaster by way of promotion with effect from 1.6.1988, the seniors pay may be stepped up to the level of juniors. Therefore, the third



respondent by his proceedings dated 15.9.1997 has fixed his pay in the post of Selection Grade Primary School Headmaster at Rs.1760/- with effect from 1.6.1988 in the scale of pay of Selection Grade Primary School Headmaster by stepping up his pay to the level of his junior P.Subramanian. The third respondent passed the impugned order dated 12.4.2001 stating that as per the audit report for the period 1995-96 to 1998-99, the petitioner's pay has been wrongly fixed and the petitioner was paid excess amount of Rs.97,388/- during the period 1.1.1996 to 31.8.1998. The third respondent by order dated 30.1.2004 has directed to recover the amount of Rs.97,388/- from the pensionary benefits of the petitioner. Therefore, the petitioner has challenged the impugned order passed by the third respondent in the present writ petition.

2. In the counter affidavit filed by the third respondent, it is stated that it was found that during his service, he got more pay than his senior and hence, it was ordered to recover a sum of Rs.2,08,164/- from his Gratuity and Rs.28,015/- from his consolidated pay and accordingly, the same was recovered in the year 2004. The petitioner in his letter, dated 3.6.2010 informed that if the recovered amounts are ordered to refund as per G.O.Ms.No.666 , dated 27.6.2009 and G.O.Ms.No.304, dated 28.3.1990 he is ready to withdraw the writ petition. Based on his letter, dated 3.6.2010, revised pay was fixed to the petitioner and revised DCRG of Rs.47,652/- was paid on 24.9.2010 and the pay arrears of Rs.1,70,964/- was paid on 22.10.2010 and there is no due to the petitioner. Therefore, the writ petition is liable to be dismissed.

3. The fourth respondent has filed counter affidavit wherein it is stated that the petitioner was promoted as Headmaster only on 3.7.1995 whereas his juniors were holding the Headmaster post on 1.6.1988 itself. Thus, the petitioner was wrongly granted Selection Grade Headmaster post w.e.f. 1.6.1988. Further, it is submitted that Government in letter No.11321/EE3 (2)/2017-1 School Education Department dated 11.7.2017 has clearly stated that G.O.Ms.No.207 dated 30.9.2008 is applicable only to the Panchayat Union Schools and not to other Schools. The fourth respondent has addressed to the Government on 7.2.2018 seeking clarification as to the further course of action to be taken in respect of cases where pensionary benefits had been revised already under G.O.No.207, but not admissible as per the clarification letter dated 11.7.2017 (i.e. In respect of those who retired from schools other than Panchayat Union schools, like the petitioner) and the same is still pending with the Government (School Education department). Therefore, according to the counsel appearing for the fourth respondent as well as Additional Govt. Pleader appearing for the respondents 1 to 3 and 5, on receipt of clarification sought from the Government (School Education Department), the request of the



petitioner would be considered and final decision could be taken for sanctioning the pensionary proposal.

4. In the light of statement made by the fourth respondent in the counter affidavit that clarification is still pending with the Secretary to Government, School Education department, this Court suo motu implead the Secretary to Government, School Education Department, Fort St. George, Chennai-9 as 5th respondent in the writ petition. In view of the stand taken by the fourth respondent that he already sent communication to the 5th respondent on 11.7.2017, the Secretary to Government, School Education Department, Fort St. George, Chennai - 9 is hereby directed to give reply to the aforesaid communication, dated 11.7.2017 to the fourth respondent within a period of eight weeks from the date of receipt of copy of the order. Thereafter, based on the reply, the 4th respondent has to pass orders within eight weeks and communicate the same to the writ petitioner.

5. The writ petition stands disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE SECRETARY. TO GOVT., GOVERNMENT OF TAMILNADU,
ADI DRAVIDAR AND TRIBAL WELFARE DEPT.,
FORT ST. GEORGE, CHENNAI-9.
- 2 THE DIRECTOR OF ADI DRAVIDAR AND TRIBAL WELFARE,
CHEPAUK CHENNAI-5.
- 3 THE DISTRICT ADI DRAVIDAR AND TRIBAL WELFARE OFFICER,
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5. THE SECRETARY TO GOVERNMENT, SCHOOL EDUCATION DEPT.,
FORT ST. GEORGE, CHENNAI-9.

+1 cc to Government Pleader Sr.NO. 63481

W.P.No.14650 of 2009
and M.P.No.2 of 2009

GPL(CO)

A.SK(27.12.2021)