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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.22359 of 2008

K.Arunagiri

... Petitioner

Vs.

1. The Government of Tamilnadu
Rep by the Secretary to the Government
Adhi Dravidar & Tribal Welfare Department
Fort St.George, Chennai-9
2. The Director of Adhi Dravidar
and Tribal Welfare
Chepauk, Chennai-5
3. The District Adhi Dravidar and Tribal Welfare Officer
Cuddalore District, Cuddalore
4. The Accountant General
Teynampet, Chennai-18

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent issued in P.M.(W9) 11298/2005, dated 28.02.2005 and 4th respondent issued in AG (A&E)/PEN P 25/3/A96-1241/RTD/2006-2007/9886 dated 22.12.2006 and AG(A&E)/PEN P25/3/A96-1241/RTD/2006-2007/9883 dated 02.01.2007 and quash the same and issue a consequential direction to the respondents to restore the pay of the petitioner at Rs.1760/- in the scale of pay of Rs.1640-2900 with effect from 01.06.1988 and to release the amount of Rs.2,25,803/- recovered from the amount of gratuity and Rs.1,70,252/- from the amount of computed value of pension to the petitioner with interest at 18% per annum.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.C.Selvaraj,
Govt.Advocate



O R D E R

The orders of recommendation of pay and recovery made towards excess payment of salary is under challenge before this Court.

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2. Before the implementation of Second Pay Commission the posts of Secondary Grade Teacher, Headmaster of Primary School and Middle School were carrying the same scale of pay and treated as same cadre and interchangeable. On and after 01.10.1970 the post of Middle School Head Master has become promotional post. After implementation fifth pay commission the post of Head Master of the Primary School also was treated as promotional post with effect from 01.06.1988. Promotion to the post of Head Master is based on seniority. But due to non adherence of seniority, those juniors continued as Head Masters had availed the benefit of Selection Grade and Special Grade in the pay scale of Head Master, whereas the seniors were deprived of the benefits, which gave rise to several anomalies. The respondents have made recovery of excess payment following a G.O vide G.O.Ms.No.1381 dated 05.10.1990.

3. This matter of recovery has undergone several rounds of litigation. Ultimately the G.O.Ms.No.1381 dated 05.10.1990 was set aside by the Tamilnadu Administrative Tribunal. Thereafter, in G.O.Ms.No.255 dated 07.11.2006 was issued to refund the recovery amount to the teachers, pursuant to the orders of this Court in W.P.Nos.7968 of 2006 and 10223 of 2003.

4. In an identical matter in W.P.No.13355 of 2009 dated 22.01.2010, this Court has upheld the order of the respondent in so far as fixing the pay of seniors on par with the juniors and set aside the order of recovery and consequently directed to restore the pay scale of similarly placed persons to that of Primary School Headmasters. Based on the judgment, this Court in W.P.No.20952 of 2007 dated 15.12.2017 granted relief in favour of a similarly placed individual. It was followed in two other judgments in W.P.No.26108 of 2007 dated 07.12.2020 and W.P.No.32512 of 2007 dated 10.12.2020.

5. Therefore, it is noted that the issue is no longer resintegra. The order of recovery has been set aside by this Court in various litigations. Thus far there is no dispute. Therefore, the orders of recovery passed in impugned orders issued by the 3rd respondent in P.M.(W9) 11298/2005, dated 28.02.2005 and 4th respondent in AG (A&E)/PEN P 25/3/A96-1241/RTD/2006-2007/9886 dated 22.12.2006 and AG(A&E)/PEN P25/3/A96-1241/RTD/2006-2007/9883 dated 02.01.2007 are not sustainable and accordingly set aside. In so far as the relief with regard to restoration of pay is concerned, the learned



counsel appearing for the 4th respondent would contend that the order passed by this Court in W.P.No.20952 of 2007 dated 15.12.2017 appeared to have been challenged before the Division Bench in so far as restoration of pay scale alone is concerned. In that event, this Court while setting aside the recovery order, impugned in the present writ petition in P.M.(W9) 11298/2005, dated 28.02.2005 and 4th respondent in AG (A&E)/PEN P 25/3/A96-1241/RTD/2006-2007/9886 dated 22.12.2006 and AG(A&E)/PEN P25/3/A96-1241/RTD/2006-2007/9883 dated 02.01.2007, issues a direction to the respondent to consider the restoration of the petitioner pay scale in the light of the judgment of the Division Bench of this Court as well as the relevant Government Orders within the period of three months from the date of receipt of order copy. It goes without saying that in view of the setting aside the recovery order, the petitioner is entitled for refund of the recovered amount. Respondents are directed to refund the recovered amount to the petitioner within a period of three months from the date of receipt of a copy of this order.

Writ petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government
Government of Tamilnadu
Adhi Dravidar & Tribal Welfare Department
Fort St.George,
Chennai-9.
2. The Director of Adhi Dravidar
and Tribal Welfare,
Chepauk, Chennai-5.
3. The District Adhi Dravidar and
Tribal Welfare Officer,
Cuddalore District, Cuddalore.



4. The Accountant General
Teynampet, Chennai-18

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+1cc to Mr.R.Saseetharan , Advocate, S.R.No.34278

+1cc to the Government Pleader, S.R.No.33940

W.P.No.22359 of 2008

SPD(CO)
SU(09/09/2021)