

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2021

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.17052 of 2010

&

WMP.No.33113 of 2019

A.Hariramachandra Pillai

... Petitioner

vs.

1. The Government of Tamilnadu  
rep. by the Principal Secretary to the Government,  
School Education Department,  
Fort St. George, Chennai-600 009.
  2. The Accountant General (A& E),  
Tamil Nadu, Chennai-600 018.
  3. The Headmaster,  
Government Higher Secondary School,  
Pallipattu-631 207,  
Thiruvallur District.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third Respondent in Mu.Mu.No.178/2009 dated 30.11.2009 and quash the same and direct the respondents to refund the amount already recovered from the petitioner with interest.

|                 |                                                                                             |
|-----------------|---------------------------------------------------------------------------------------------|
| For Petitioner  | : Mr.P.Rajendran                                                                            |
| For Respondents | : Mr.Rajaperumal, AGP for R1 & R3<br>Additional Government Pleader<br>Mr.T.Ravikumar for R2 |

O R D E R

The grievance of the Writ Petitioner relates to an order of the third Respondent dated 30.11.2009 whereby recovery of alleged excess payment was ordered and amounts already received by the Writ Petitioner were recovered.

2. The Writ Petitioner asserts that he was appointed as a Secondary Grade Teacher in the Government Higher Secondary School, Pallipattu, Thiruvallur District, on 06.10.1975. Upon completion of 10 years of service, he was awarded the selection grade in the post of Secondary Grade Teacher on 06.10.1985. Subsequently, he was promoted to the post of B.T. Assistant

(History) on 14.10.1991. According to the Petitioner, the pay scale of a Secondary Grade Teacher and an Ordinary Grade BT Assistant (History) were equal, i.e. Rs.1400-2600. On that basis, the selection grade in the post of BT Assistant (History) was awarded to the Petitioner with effect from 11.10.1995 by counting the services rendered by the Petitioner both as a Selection Grade Secondary Grade Teacher and as an Ordinary Grade BT Assistant (History). The Petitioner was also paid monetary benefits on such basis. Thereafter, he was awarded the Special Grade in the post of B.T. Assistant with effect from 11.10.2005. After being promoted as a P.G. Assistant on 01.11.2007, he retired from service on 30.04.2009.

3. After his retirement, the third Respondent issued the impugned order dated 30.11.2009, re-fixing his pay with effect from 30.12.1993 and ordering the recovery of the alleged excess amount of Rs.1,32,159/- from the Petitioner. Pursuant thereto, the third Respondent recovered a sum of Rs.52,220/- in two installments from the Petitioner's pay commission arrears. The present writ petition is filed in the above facts and circumstances of the case.

4. Learned counsel for the Petitioner contends that the impugned order is ex facie illegal and unjustified. In support of such contention, he points out that the grant of selection grade to the Petitioner in the post of B.T. Assistant (History) with effect from 11.10.1995 by counting the services rendered by the Petitioner both as a Selection Grade Secondary Grade Teacher and as an ordinary Grade B.T. Assistant (History) was perfectly in order on account of the fact that the pay scale of a Selection Grade Secondary Grade Teacher and an Ordinary Grade B.T. Assistant (History) was the same. In addition, he contends that the order of recovery was issued about 14 years after awarding the selection grade to the Petitioner and, in fact, subsequent to the retirement of the Petitioner. Therefore, he submits that the impugned order of recovery is directly contrary to the principles laid down by the Hon'ble Supreme Court in State of Punjab v. Rafiq Masih (2015) 4 SCC 334 (Rafiq Masih). For all these reasons, Mr. Rajendran submits that the impugned order is liable to be set aside.

5. Learned Additional Government Pleader submits that the Petitioner may be provided an opportunity to show cause against the proposed recovery. As regards the recovery, he submits that it was in order inasmuch as the Petitioner was not entitled to selection grade status with effect from 11.10.1995. The Accountant General has filed a counter affidavit and the stand of the Accountant General is that the pay scale of a Selection Grade Secondary Grade Teacher and that of an Ordinary Grade B.T. Assistant (History) became equal only with effect from

01.06.1988. Consequently, he contends that the 10 year period should have been reckoned from 01.06.1988 and not from 06.10.1985.

6. Upon considering the rival contentions, it is evident that the only bone of contention is regarding the date from which the Petitioner became entitled to selection grade status, i.e. whether from October 1995 or 01.06.1998. There is no doubt at all that the Writ Petitioner did not make a misrepresentation or commit an irregularity so as to derive benefits that he was not entitled to. Such pay fixation was made on 11.10.1995. The admitted position is that the impugned order of recovery was issued on 30.11.2009, which is about 14 years subsequent to the pay fixation. It was also done without prior notice to the Petitioner and, consequently, without an opportunity to show cause. Significantly, it is also subsequent to the retirement of the Petitioner.

7. In such circumstances, the principles laid down in Rafiq Masi would squarely apply and enure to the benefit of the Petitioner. The Supreme Court had formulated tests in Rafiq Masih to determine whether the Court should restrain recovery in equity. The relevant factors are: whether the excess payment was made on account of misrepresentation or any other cause which is attributable to the employee concerned; whether more than 5 years have lapsed since the date of recovery; whether the order of recovery is proximate to or after the retirement of the employee concerned; and whether the employee is a Class III or IV employee or equivalent thereto. The Petitioner herein qualifies on almost all counts. Consequently, the impugned order dated 30.11.2009 is unsustainable.

8. Therefore, the order dated 30.11.2009 is quashed. As a corollary, any recovery made by the third Respondent from the Petitioner shall be refunded within a period of two months from the date of receipt of a copy of this order. If it is not refunded within such time, it will carry interest at 6% per annum from the date of default until payment thereof to the Petitioner.

9. In the result, the writ petition is allowed. Consequently, W.M.P. No.33113 of 2019 is closed. There will be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kal/rrg

To

1. The Secretary to the Government,  
The Government of Tamil Nadu  
School Education Department,  
Fort St. George, Chennai-600 009.
2. The Accountant General (A& E),  
Tamil Nadu, Chennai-600 018.
3. The Headmaster,  
Government Higher Secondary School,  
Pallipattu-631 207,  
Thiruvallur District.

+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.14116.  
+1cc to Mr.P.Rajendiran, Advocate, S.R.No.14086.  
+1cc to the Government Pleader, S.R.No.14848.

Writ Petition No.17052 of 2010

GPL(CO)  
CSR 08.04.2021