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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

W.A.No. 2168 of 2021 and
C.M.P. No.13697 of 2021

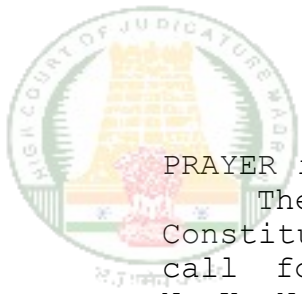
1. The Government of Tamil Nadu,
Rep. by the Secretary to the Government,
Finance (Pay Cell) Department.
Fort St. George, Chennai - 600 009
 2. The Secretary to the Government.
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 600 009
 3. The Director of School Education,
College Road,
Chennai - 600 006
 4. The Chief Educational Officer,
Villupuram District,
Villupuram
 5. The District Educational Officer,
Villupuram District,
Villupuram.
 6. The Headmaster,
Government Boys Higher Secondary School,
Thiyagathurugam,
kallakurichi Taluk,
Villupuram District
-Appellants/ Respondents

Vs.

N. Rajendran

...Respondent/ Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, against the order, dated 25.10.2019, passed in W.P.No.11999 of 2013.



PRAYER in W.P.No.11999 of 2013:

These Writ petitions are filed under Article 226 of the Constitution of India, for a Writ of certiorarified Mandamus to call for the records of the 5th respondent in proceedings Na.Ka.No.88886/A1/2012 dated 20.3.2013 and 6th respondent in Na.Ka.No.445/12-13 dated 28.3.2013 and quash the same and issue a consequential direction to the respondents to restore the pay of petitioners as on 1.1.2006 in the pay band of Rs.15600-39100+Grade Pay 5400, as fixed originally in Na.Ka.No.229/11-12 dated 14.12.2011 of the 5th respondent with all benefits.

For Appellants : Mr.K. Tippusultan,
Government Advocate.
For respondent : Mr.R. Saseetharan

J U D G M E N T

(Judgment of the Court was delivered by S. VAIDYANATHAN,J)

The Writ Appeal is filed against the order passed in W.P.No.11999 of 2013, dated 25.10.2019, by which the order of recovery of excess amount from the pay of the Respondent herein was set aside.

2. The Appellants herein are the Respondents in W.P.No.11999 of 2013 and the Respondent is the Writ Petitioner. The Respondent herein has filed the Writ Petition in W.P.No.11999 of 2013 challenging the order of the Fifth and Sixth Appellants dated 20.03.2013 and 28.03.2013 respectively and for a direction to the Appellants to restore the pay of the Respondent as on 01.01.2006 in the pay band of Rs.15600-39100 + Grade pay as fixed originally in Na.Ka.No.229/11-12 dated 14.11.2011 of the Sixth Appellant/Respondent. The learned Single Judge vide order dated 25.10.2019 has set aside the order of recovery of excess amount from the pay of the Respondent

3. The learned Government Advocate appearing for the Appellants submitted that the learned Single Judge failed to take note of the fact that the Fifth and Sixth Appellants have passed the impugned orders based on the Government Orders dated 22.07.2013 and 12.09.2018. He further contended that in the order dated 14.12.2011, it has been categorically mentioned that if there is any error or audit objection in the pay scale fixed, the excess amount paid will be recovered and as the Writ petitioner has accepted the said condition, he cannot challenge the order dated 28.03.2013. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court in the case of State of Punjab and Others Versus Rafiq Masih (White Washer) and others reported in 2015 4 SCC 334 and prays to set aside the order of the learned Single Judge.



4. The learned counsel appearing for the Respondent submitted that there is no avenue of promotion to the post, in which the Respondent was employed and in order to give benefits, the Government has extended selection grade of pay. He has further submitted that the learned Single Judge, by referring to the Judgment of the Hon'ble Supreme Court in *Syd Abdul and Other Vs. State of Bihar and Others* reported in 2009 3 SCC 475, has rightly set aside the order for recovering the excess amount from the pay of the Respondent and therefore, no interference is required.

5. Heard both sides. Perused the materials available on record.

6. The sum and substance of the case on hand is that the pay scale of the Respondent has been erroneously fixed, thereby wrong amount was paid to the employee. Thereafter, the same was ordered to be recovered and questioning the same, the Writ Petition in W.P.No.11999 of 2013 was filed, in which the learned Single Judge held that in the absence of any fraud or misrepresentation on the part of the employee, the excess amount granted should not be recovered.

5. Though the contention of the learned Government Advocate, appears to be sound at the first blush, a cursory look at the order dated 28/8/2003 shows that admittedly, it is a non speaking order, with regard to wrong fixation of pay to the vocational teachers. In the proceedings of the Sixth Respondent dated 28.03.2013, it has been simply stated that the pay scale, which is revised as 15600-39100+ 5400 is hereby cancelled and they have decided to refix the pay scale of 9300-34800+4600. . Though the Government is entitled to recover the amount based on the guidelines pronounced by the Apex Court, no speaking order has been passed with respect to recovery of the salary fixed on 14.10.2011 in the Impugned Order dated 28.03.2000. Therefore, in the absence of speaking order being passed, we are of the view that the learned Judge was right in holding that there is no fraud or misappropriation on the part of the employee and that, the excess amount paid cannot be recovered.

6. In view of the same, we find no reason to interfere with the order of the learned Single Judge dated 25.10.2019 made in W.P.No.11999 of 2013 and this Writ Appeal is liable to be dismissed.



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7. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arr
To

1. The Government of Tamil Nadu,
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6. The Headmaster,
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Thiyagathurugam,
kallakurichi Taluk,
Villupuram District.

+1 cc to MrR. Saseetharan, Advocate Sr.NO. 44747

W.A.No. 2168 of 2021

CA(CO)
A.SK(07.12.2021)