



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2021

CORAM :

**THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE**

AND

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.A. (MD) No.2221 of 2021

and

C.M.P (MD) No.11018 of 2021

WEB COPY

- 1.The Director of Elementary Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai - 6.
- 2.The District Elementary Educational Officer,
Opposite to Rathna Theatre,
Tirunelveli.
- 3.The Additional Assistant Elementary Educational Officer,
Kadayam,
Ambasamuthiram,
Tirunelveli District. ... Appellants/Respondents

Vs.

C.Soundararajan ... Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 03.06.2020, passed in W.P.(MD) No.15733 of 2015, on the file of this Court.

Prayer in WP(MD). 15733/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the entire records pertaining to the impugned proceedings in Na.Ka.No.256/Aa1/2013 dated 15.05.2015 of the 3rd Respondent and quash the same as illegal.

For Appellants : Mr.SRA.Ramachandran,
Additional Government Pleader

For Respondent : Mr.R.Bala Ramesh
for Mr.P.Bhaskar



J U D G M E N T

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**[Judgment of the Court was delivered by
The Hon'ble ACTING CHIEF JUSTICE]**

By this writ appeal, a challenge is made to the judgment dated 03.06.2020, made in W.P.(MD) No.15733 of 2015, whereby the writ petition preferred by the respondent/writ petitioner was allowed, whereby he has challenged the order dated 15.05.2015 to recover a sum of Rs.3,05,869/- [Rupees Three Lakhs Five Thousand Eight Hundred and Sixty Nine only].

2. The case has a chequered history in view of the fact that prior to the present writ petition, the respondent/writ petitioner has approached this Court earlier also. Further, it was after his appointment as Middle School Headmaster by order dated 07.07.1995, but he was provided the scale of pay of Middle School Teacher. From 01.06.2000, salary of the Middle School Headmaster was given to the respondent/writ petitioner.

3. Thereafter, the appointment in the post of Middle School Headmaster was cancelled on the grievance raised by one Sulochana. It was mainly on the ground that the respondent/writ petitioner was not in possession of required qualification for the post of Middle School Headmaster. The respondent/writ petitioner challenged the order of cancellation dated 06.06.1997, by maintaining a Writ Petition bearing W.P.No.14757 of 1997 and interim order was passed by the Court followed by acceptance of the writ petition by order dated 04.02.2003 and the respondent/writ petitioner was extended the benefits in compliance of the order.

4. In the meanwhile, the respondent/writ petitioner has sent a representation on 31.12.2010, to relax five years of Secondary Grade experience required for the post of Headmaster appointed in the Aided School. No order on the aforesaid was passed and in the meanwhile, the respondent/writ petitioner was allowed to get Selection Grade. The salary was also fixed as a consequence thereupon by proceedings dated 22.10.2013. It was thereupon that an inspection was conducted by the appellants herein that the respondent/writ petitioner did not obtain the relaxation of five years of Secondary Grade experience and therefore, was not entitled to the benefit extended to him and an order was passed thereupon to make a recovery of Rs.3,05,869/- [Rupees Three Lakhs Five Thousand Eight Hundred and Sixty Nine only] which is after cancelling the benefits of increment and Selection Grade.



5. The order aforesaid was challenged by maintaining a writ petition and an order was passed by the learned Single Judge after taking note of the fact that while at the first instance the appointment of the respondent/writ petitioner was cancelled followed by a writ petition, an order was passed by this Court on 04.02.2003 setting aside the order of cancellation of appointment, however, liberty was given to proceed in the matter as per the principles of law. It was for the reason that before cancellation order, no opportunity was given to the respondent/writ petitioner. In view of the liberty given in the order dated 04.02.2003, the appellants/respondents were expected to proceed in the matter and take action after providing opportunity of hearing to the respondent/writ petitioner. The appellants/respondents did not pursue themselves to take action despite the liberty given, rather the respondent/writ petitioner was extended the benefit of Selection Grade and fixation of salary and consequences thereupon.

6. After lapse of few years, that order of recovery was issued after withdrawal of benefit of increments. It was again without an opportunity of hearing to the respondent/writ petitioner though specifically it has been narrated in the impugned order. The recovery of the amount or withdrawal of any benefit could not have been made without an opportunity of hearing to the respondent/writ petitioner.

7. In view of the above and as we do not find any error in the order impugned herein, we find no reason to call for interference. However, while disposing of the appeal, we direct the appellants/respondents to initiate action against the defaulting officer who failed to take action in the matter, despite the liberty given in the order dated 04.02.2003. It was the stage when the order of cancellation of the appointment to the post of Headmaster was questioned by maintaining a writ petition. It was precisely allowed for want of an opportunity of hearing. Thus, the appellants/respondents were given liberty to adhere to the Rule of principles of natural justice to take a decision afresh. The officer defaulted therein needs to be subjected to an action as on account of his lapse, not only the respondent/writ petitioner was further given the benefit but has given rise to the present litigation also. The appellants herein are given further liberty to take action afresh in the matter for compliance of principles of natural justice within a period of four [4] months from the date of receipt of a copy of this judgment and for that, the order impugned herein and this judgment would not come in the way, as we are not causing any interference in the order impugned subject to the aforesaid liberty.



8. Accordingly, this Writ Appeal is disposed of. There shall be no order as to costs. Consequently, connected C.M.P(MD) No.11018 of 2021 is closed.

Sd/-

Assistant Registrar (CS I)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR/RM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

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+1CC to SPL.GP(SR.No.39978)

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MGJ(03.01.2022) 4P 5C