



W.P.No.1451 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1451 of 2015

K.Ragupathiraj

...Petitioner

-Vs-

1.The Government of Tamilnadu,
Rep. by the Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2.The Director of School Education,
College Road, DPI Campus,
Chennai - 600 006.

3.The Chief Educational Officer,
Coimbatore, Coimbatore District.

4.The Head Master,
Government Hr. Sec. School,
Naickanpalayam,
Coimbatore - 641 020.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records in



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connection with the impugned order passed by the 3rd respondent bearing Pa.Mu.No.6028/A3/2007 dated 14.08.2007 and consequential order of the 4th respondent bearing Na.Ka.No.5/07 dated 22.06.2007 and quash the same and consequently direct the respondents to return or repay the recovered amount of Rs.83,906/- to the petitioner.

For Petitioner : Mr.J.Muthukumaran
for Mr.V.Thirupathi

For Respondents : Mr.M.Bindran
Add. Government Pleader

ORDER

The order of recovery issued in proceedings dated 22.06.2007 to recover the excess salary paid to the petitioner is under challenge in the present writ petition.

2. The writ petitioner was appointed as Higher Grade Teacher on 05.01.1972. He was promoted as Secondary Grade Teacher on 01.06.1974 and his service was regularized retrospectively with effect from 05.01.1972. The petitioner was awarded with selection grade on 05.01.1982 and he was subsequently promoted as B.T. Assistant on 25.03.1987. The petitioner



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reached the age of superannuation and he was allowed to retire from service on 31.10.2007. During the eve of his retirement, the impugned order of recovery has been issued by the Head Master of the School on the ground that excess salary was paid to the petitioner from 01.06.1994 to 30.06.2007 and the said excess amount is calculated as Rs.83,096/-, which is to be recovered.

3. The learned counsel for the petitioner made a submission that the order of recovery has been issued without any show cause notice and opportunity to the petitioner. That apart, the details regarding calculation of recovery was also not made available to the petitioner. Thus, the impugned order is liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents objected the said contention by stating that the respondents came to know the error in fixation of pay while fixing the revised scale of pay in the selection grade. When an error has been identified while granting the revised scale of pay, the authorities have corrected the error and



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consequently calculated the excess salary paid to the petitioner, which is sought to be recovered. Thus, there is no infirmity in the impugned recovery order.

5. This Court is of the considered opinion that any order affecting the rights of an employee cannot be passed without affording an opportunity to the employee concerned. In the present case, the respondents could not be able to establish that a show cause notice was issued before passing the impugned order. Thus, the order of recovery is in violation of the principles of justice. That apart, the order of recovery was issued during the eve of the petitioner's retirement and he was also allowed to retire in the year 2007 and now he is aged about 72 years. In the event of any such recovery after this length of time, it would cause prejudice to the petitioner and therefore, this Court is inclined to consider the writ petition.

6. Accordingly, the respondents are directed to correct the errors or mistakes, if any, in the matter of fixation of pay and payment of pension and pay the correct pension as applicable to the petitioner. However, the excess



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salary paid to the petitioner, as per the impugned order dated 22.06.2007, cannot be recovered.

7. In the result, the impugned order dated 22.06.2007 passed by the fourth respondent in proceedings Na.Ka.No.5/07, is quashed, with reference to the excess salary paid to the writ petitioner. The excess amount, if recovered pursuant to the impugned order, is directed to be repaid to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order.

8. With the above observations, the Writ Petition stands allowed. No costs.

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Index: Yes

Internet: Yes

Speaking order/Non-speaking order

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S.M.SUBRAMANIAM, J.

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To

- 1.The Secretary to Government,
Government of Tamilnadu,
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Director of School Education,
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