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W.P.No.14035 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.14035 of 2019
and
W.M.P.Nos.14103 & 26248 of 2019

S.Sathiya

...Petitioner

-Vs-

1.The Chief Education Officer,
Collector Office,
Dharmapuri.

2.The Headmaster,
Government Higher Secondary School,
Linganayakkanhalli,
Dharmapuri District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the entire records pertaining to the impugned order in Na.Ka.No.10/2018, dated 18.02.2019 passed by the second respondent and quash the same.

For Petitioner : Mr.G.Mutharasu

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader



W.P.No.14035 of 2019

ORDER

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The order, re-fixing the scale of pay of the petitioner by way of correction of mistake, is put under challenge in the present writ petition.

2. The petitioner states that she joined as a Teacher in Harur Panchayat Primary School on 08.07.1988. On 23.06.2003, she was appointed as Primary School Headmistress and she was further promoted to the post of Middle School Headmistress. Thereafter, on upgradation of the School, in which the petitioner was serving, she was posted as a B.T.Assistant.

3. The petitioner states that her pay scale was fixed as Rs.6500-200-10500, for which, revised fixation was given as Rs.15600-39100 and Grade Pay Rs.5400/-. The second respondent issued an order of recovery to recover the excess amount of salary, based on an audit objection. The petitioner filed W.P.No.779 of 2015, challenging the unilateral decision taken by the authorities without providing opportunity to her. This Court remanded the matter back to the authorities competent to issue a show cause notice and to provide an opportunity to the petitioner to defend her



W.P.No.14035 of 2019

case and thereafter take a decision and pass final orders. Pursuant to the directions issued by this Court, the respondent issued a show cause notice setting out all the details including correct fixation of pay, as applicable to the petitioner, in notice dated 02.08.2018 and in response, the petitioner submitted her detailed representation establishing her case regarding fixation of pay and revision of pay. The authorities competent considered the explanation and passed final orders in proceedings dated 18.02.2019, which is under challenge in the present writ petition.

4. The learned counsel for the petitioner mainly contended that the Government Order issued in G.O.Ms.No.57, Finance (Pay Cell-II) Department, dated 28.01.1991 would be applicable, which speaks about re-fixation of pay of a senior on par with the junior whose pay has been re-fixed under Rule 4(3) of the Tamil Nadu Revised Scales of Pay Rules, 1989. Relying on the said Government Order, the learned counsel for the petitioner reiterated that, as per the Government Order, the revision of pay effected through the impugned order is untenable and therefore, the order is to be set aside.

5. The learned Special Government Pleader appearing on behalf of



W.P.No.14035 of 2019

the respondents objected the said contention, by stating that the Government issued a clarification letter vide Letter No.26204/Pay Cell/2011-1, dated 18.05.2011, with reference to the order issued in G.O.Ms.No.57, dated 28.01.1991. Accordingly, the said Government Order cannot be applied in the case of the petitioner for grant of revision of pay.

6. Regarding the fixation of pay of the petitioner, the respondents have filed a counter affidavit elaborately and the relevant paragraphs are extracted hereunder:-

"7.The writ petitioner's Service Particulars are as follows:

S. No	Post Held	Scale of Pay	Pay com.	Service		Total Service		
				From	To	Yrs.	Months	Days

In Elementary Education Department

1	Ordinary Gr. Sec. Gr. Teacher	1200-2040	5 th	08/07/98	07/07/98	10	0	0
		4500-125-6000	6 th					
2	Sel. Gr. Sec. Gr. Teacher	5300-150-8300	6 th	08/07/98	22/06/03	4	11	15
3	Ordinary Gr. Pry School HM	5300-150-8300	6 th	23/06/03	22/07/07	4	1	0
		PB2-9300-34800+G.P.4500	7 th					
4	B.T.Asst.[Tamil]	PB2-9300-34800+G.P.4600	7 th	23/07/07	08/01/08	0	5	16



W.P.No.14035 of 2019

5	B.Ed Gr.HM	PB2-9300-34800+G.P.4700	7 th	09/01/08	16/12/11	3	11	8
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In Secondary Education

6	B.T.Asst. Tamil]	PB2-9300-34800+G.P.4600	7 th	17/12/11	Till date	7	7	
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It is submitted that, in this case, the writ petitioner was awarded Selection Grade in Secondary Grade Teacher post with effect from 08.07.1998 (Scale of pay Rs.5300-150-8300) in 6th Pay Commission. She rendered Selection Grade Secondary Grade Teacher service for 4 years, 11 months and 15 days. Then she was promoted to the post of Panchayat Union Primary School Headmaster with effect from 23.06.2003 Forenoon. She rendered Ordinary Grade Primary School Headmaster service from 23.06.2003 to 22.07.2007 for 4 years 1 months and 0 days. Total identical scale of pay service in Selection Grade Secondary Teacher and Ordinary Grade Primary School Headmaster service arrived to 9 years 0 months and 15 days only. As she is not having total 10 years of service both in Selection Grade Secondary Grade Teacher Service and Ordinary Grade Primary School Headmaster service, she is not actually eligible to get Selection Grade in Primary School Headmaster's post with reference to G.O.Ms.No.210/P&AR(S) Department dated



W.P.No.14035 of 2019

11.03.1987. But contrary to above Government Order the writ petitioner was fixed pay in Selection Grade scale of pay of Primary School Headmaster i.e. in PB3-15600-39100+G.P.5400, by the Headmaster of Govt.High School Linganaickanahalli with effect from 08.07.2008.

(i) Without 10 years of Identical Scale Service both in Sel.Gr.Sec.Grade Teacher and in Ordinary Grade Primary School Headmaster service (total identical Service from 08.07.1998 to 22.07.2007 arrives at 9 yrs. & 15 days) 10 years of Service not completed in identical scale of pay post service.

(ii) Without orders of Selection Grade in Primary School Headmaster post from competent authority i.e District Elementary Education Officer, Dharmapuri.

(iii) 08.07.2008- the date of fixation of pay in Selection Grade Primary School Headmaster's post in PB3 15600-39100+G.P.5400, actually he was not working in Primary School Headmaster's post. Earlier to 08.07.2008, he was promoted as B.T.Assistant [Tamil] on 23.07.2007 and then subsequently promoted to B.Ed. Grade Middle School Headmaster post with effect from 09.01.2008 not analyzing the above points."

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W.P.No.14035 of 2019

"16.It is submitted that Rule4(3) of Tamilnadu Revised Scales of Pay Rules-1989 states that *“if the pay fixed in the officiating post under sub-rule(1) is lower than the pay fixed in the substantive post, it shall be fixed at the state next above the substantive pay. Where the pay of Government Servant who has moved from a lower post to a higher post or from an Ordinary Grade to a Selection Grade is fixed at a stage lower than that would have been admissible in the lower post or the Ordinary Grade (if he is in the Selection Grade post) his pay shall be stepped up to the stage equal to the pay in the lower post or grade, or if there is no such stage to the next higher stage, provided that this will apply only to Government Servant who have actually moved to the higher or selection grade post from the lower or ordinary Grade post.”* (True extract of the above rule enclosed). The above rule should be applied only when the Tamilnadu Revised Scales of Pay Rules 1989 was in existence. But during the implementation of Tamilnadu Revised Scales of Pay Rules 1998, Tamilnadu Revised Scales of Pay Rules 2009 and Tamilnadu Revised Scales of Pay Rules-2017, the above 4(3) rule could not be implemented as there were no such rule in these Pay Commissions. In the



W.P.No.14035 of 2019

Government Letter No.3924/CMPC/2014-1 dated 18.07.2014 the Government has clearly specified that the rule 4(3) has not been extended under Revised Scales of Pay Rules 2009. According to the above (i) the writ petitioner cannot be given the benefit of fixation of pay in PB3-15600-3900+G.P.5400 applicable to Selection Grade Primary School Headmaster's post w.e.f.08.07.2008 and (ii) also as she was not actually worked as Primary School Headmaster on 08.07.2008 and she is working as B.Ed. Grade Middle School Headmaster's post with effect from 08.01.2008 onwards."

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"18.It is submitted that as per the above Hon'ble High Court orders, the writ petitioner was served on with a show cause notice in RC.No.10/2018 dated 02.08.2018 by the Headmaster, Government High School, Linganaickanhalli (copy enclosed), giving sufficient time to offer her explanations to show cause as to why she should not be issued with recovery of excess pay drawn and paid to her due to erroneous fixation of pay in PB-3 Rs.15600-39100+G.P.5400 contrary to Government Rules. The writ petitioner offered her irrelevant remarks on 16.08.2018 (copy enclosed) on



W.P.No.14035 of 2019

the show cause notice quoting Hon'ble Supreme Court Judgment in 1994(6) SCC 154 Bhagavan Shukla Vs.Union of India and Hon'ble High Court Judgment in case W.P.No.35040 of 2004, stating not to make recoveries from her according to the above judgments, with the aim to evade from refunding the excess pay and allowance drawn by her. However, the Headmaster, Government High School, Linganaickanahalli issued recovery orders to her in Rc.No.10/2018 dated 18.02.2019 explaining proper reasons for making recovery of overpayment. On receipt of the recovery order the writ petitioner again filed this case in the Hon'ble High Court of Madras challenging the above recovery orders and requesting to quash the same.

19.It is submitted that in a similar case, the Accountant General (A&E), Chennai while admitting the pensionary benefits vide Letter No.P10/11019955/4/R1019955 dated 03.10.2017 (copy enclosed) on behalf of one (late) V.Usharani, B.T. Assistant of Government High School, Gulianoor, Dharmapuri District, the last pay drawn by (late) V.Usharani in PB3-15600-39100+G.P.5400 was reduced, fixing her pay in PB2-9300-38400+G.P.4600 by the A.G., Chennai



and pensionary benefits were admitted."

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7. In the context of revision of pay and the interference of the High Court by exercising the power of judicial review, the Hon'ble Supreme Court of India in the case of ***Union of India and others Vs. Dineshan K.K. reported in MANU/SC/0395/2008*** held that *"It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well.*

8. It is further held that *"Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of*



W.P.No.14035 of 2019

the appellants. If the fixation is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene, but not otherwise.

9. In the present case, the revision of pay was done without even providing an opportunity to the petitioner. When the petitioner approached this Court, this Court directed the authorities to look into the issues carefully and take a decision, after affording an opportunity to the petitioner. Accordingly, a detailed show cause notice was issued to the petitioner setting out the proposed revision of pay and the petitioner also submitted her explanation. Thereafter, the authorities have assinged reasons for re-fixation and passed an elaborate order fixing the scale of pay in accordance with the Pay Rules and the Government Orders applicable.

10. At this juncture, the learned Special Government Pleader made a submission that, even at the time of initial revision of pay, the petitioner had given an undertaking that in the event of any error in fixation, she has no objection for recovering the excess pay, if any paid. Based on the undertaking, the correctness was verified and thereafter, the pay was revised. Thus, there is no infirmity.



W.P.No.14035 of 2019

WEB COPY

11. This Court is of the considered opinion that the undertaking given by the petitioner is binding on her. In the event of any error or otherwise is identified at a later point of time, there is no impediment for the authorities competent to recover the excess salary. Unjust gain in the matter of salary by the public servants is impermissible. Therefore, there is no impediment for the competent authorities to correct the errors, if any occurred in fixing the scale of pay. In this regard, the employee also has given an undertaking and thus, this Court do not find any infirmity in respect of the order passed. The speaking order passed by the competent authorities, re-fixing the scale of pay with reasonings, need not be interfered with by this Court.

12. Thus, the writ petition is devoid of merits and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2022

Index:Yes
Internet:Yes
Speaking order
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WEB COPY



W.P.No.14035 of 2019



W.P.No.14035 of 2019

WEB COPY To

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- 2.The Headmaster,
Government Higher Secondary School,
Linganayakkanhalli,
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W.P.No.14035 of 2019

S.M.SUBRAMANIAM, J.

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W.P.No.14035 of 2019

15.11.2022