

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM

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

W.P.NO.11716 OF 2014

&

M.P.NOS.2 AND 3 OF 2014

K.Mohanasundaram

... Petitioner

..Vs..

1. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 09.
2. The Joint Director of School Education,
(Vocational Education),
College Road, Chennai - 6.
3. The Chief Educational Officer,
Ariyalur District,
Ariyalur.
4. The Head Master,
KSANM Government Hr.Secondary School,
Chettiayar Street, Udayarpalayam,
Ariyalur District.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records pertaining to the orders of the 4th respondent in proceeding Pa.Mu.No.8507/ A4/ 2012 dated 08.01.2013 relating to re-fixation and recovery of pay and quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.S.Prabhakaran
Government Advocate

ORDER

The order dated 08.01.2013, re-fixing the pay of the writ petitioner and the consequential recovery imposed is under challenge in the present writ petition.

2. The writ petitioner was appointed as a part time Vocational Instructor on 21.02.1986 subsequently, he was appointed as a Regular Vocational Instructor on 16.10.1992 and further the petitioner was awarded with the Selection Grade Vocational Instructor on completion of 10 years of service. The pay of the writ petitioner was fixed and subsequently based on the audit objections, the pay fixed to the petitioner was sought to be re-fixed and consequently recovery is also imposed. The issues regarding fixation of pay to the Vocational Instructor was considered by this Court in a batch of writ petitions in W.P.Nos. 2654, 2924 and 2663 of 2018 dated 19.03.2018 in the case of L.Natarajan Vs. The State of Tamil Nadu & others and an order was passed on 19.03.2018 and the relevant portions of the order reads as follows:

"6. A Government letter cannot prevail over a Government order issued under Article 162 of the Constitution of India. But then, as per the proceedings of the Principal Accountant General, Chennai, the monetary benefits can be given only from 01.04.2013. If they have been mistakenly given from the earlier date, the excess pay has to be recovered.

7. The learned counsel appearing on behalf of the writ petitioner placing reliance of the Hon'ble Supreme Court of India in 2015 (4) SCC 334 [State of Punjab v. Rafiq Masih] held that an order of recovery may not be made. Though the Hon'ble Supreme Court made it clear that only if it would cause hardship, recovery ought not be effected. In this case, some of the writ petitioners who have retired are very much getting pension. Therefore, the order of recovery will not cause hardship to them.

8. The Standing Counsel appearing on behalf of the Principal Accountant General, Chennai, submits that the objection was made in the year 2011. That apart, the proceedings dated 14.07.2014 of the Principal Accountant General, Chennai, are not under challenge.

9. Therefore, these writ petitions are partly allowed by holding that selection grade Vocational Instructor are entitled to be paid selection grade

scale of pay Rs.15600-39100+GP 5400 admissible with monetary benefits from 01.04.2013. No costs. Consequently, connected miscellaneous petitions are closed."

3. The said order passed by this Court was implemented by the Government and a Government Order was issued in G.O.Ms.No.306, Finance (CMPC) Department, dated 12.09.2018. The said Government order reads as under:

"7. As there is no promotional avenues for the post of vocational instructors it would not be appropriate to restrict their Selection Grade/Special Grade scales of pay as that of BT Assistant who are having promotional prospects of elevating to the post of Head Master High School/Head Master Higher Secondary School/District Educational Officer in the light of the above facts. The Government has decided to implement the orders of the Madurai Bench of Madras High Court dated 19.03.2018 in W.P.(MD).No.2694, 2924 & 2663 of 2018 and 15980 & 17197 of 2014. Accordingly, the Government direct that the Selection Grade Scale of Pay of Vocational Instructors who were awarded Selection Grade prior to 01.01.2016 and in the case of employees who have exercised their opinion to come over to the revised scales of pay on the date of their award of Selection Grade between 01.01.2006 and 31.05.2009 shall be refixed in the scale of pay of Rs.1600-39100 + G.P.5400 notionally with effect from 01.01.2006 on the date of award of Selection Grade in the post of Vocational Instructor with monetary benefits from 01.04.2013.

8. The above orders shall be applicable to all the Vocational Instructors who were awarded Selection Grade prior to 01.01.2006 and those awarded Selection Grade between 01.01.2006 and 31.05.2009 and opted for the revised scales of pay on that date irrespective of the fact as to whether they filed separate writ petitions or not."

4. In view of the above orders of this Court and the Government Order passed in G.O.Ms.No.306, Finance (CMPC) Department, the case of the writ petitioner is also directed to be considered and accordingly appropriate orders are to be passed based on the said G.O., dated 12.09.2018, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

5. With this direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrm/psa

To

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School Education Department,
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Chennai - 09.
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+1cc to the Government Pleader, S.R.No.39337

W.P.NO.11716 OF 2014

RLD(CO)
PBS/11/07/2022