



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.10808 of 2020

and

W.M.P. (MD) No.9542 of 2020

G.Arokia Rajasekar

... Petitioner

-vs-

1. The Director of School Education,
17, College Road,
Thousand Lights West,
Thousand Lights,
Subba Road Avenue,
Nungambakkam,
Chennai-600 008.

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

3. The Block Educational Officer,
Musiri Block,
Musiri Post & Taluk-621211
Tiruchirapalli District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Manamus to call for the records of the third respondent i.e., the Block Educational Officer, Musiri in his மு.மு.எண்.787/அ2/2020 நாள் : 25.08.2020 and quash the same and consequently direct the respondents to confirm the Selection Grade already ordered in the proceedings ந.க.எண்.1620/அ1/2017 நாள் : 14.11.2017 of the Assistant Elementary Educational Officer, Marungapuri and Special Grade order in the proceedings மு.மு.எண்.1572/அ2/2020 நாள் : 18.06.2020 of the District Educational Officer, Musiri.

For Petitioner	:	Mr.S.Visvalingam
For Respondents	:	Mr.G.V.Vairam Santhosh, Additional Government Pleader

O R D E R

The orders of refixation of pay and consequential recovery are under challenge in the present writ petition.

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2.The petitioner was appointed as Secondary Grade Teacher initially in St. Joseph High School, Verkottu, Ramanathapuram Taluk, which is an aided school and thereafter, he was appointed as Secondary Grade Teacher, Panchayat Union Primary School, Thirupampuram, Thiruvarur District and he joined duty on 17.07.2009. Selection Grade and Special Grade in the post of Secondary Grade Teacher were granted to the petitioner on completion of 10 years and 20 years of service respectively. Subsequently, the authorities found that there was an error in fixation of pay and excess pay has been granted to the writ petitioner over and above the pay applicable to the cadre of Secondary Grade Teacher. Thus, the authorities competent corrected the erroneous fixation and issued the impugned order for revised scale of pay as applicable to the petitioner and imposed recovery in respect of the excess pay received by the petitioner.

3.The learned counsel for the petitioner made a submission that the period of services rendered by the petitioner in the aided school is also to be calculated for Selection Grade and Special Grade. It is contended that the petitioner is working as a Secondary Grade Teacher and recovery should not be imposed.

4.The learned Additional Government Pleader disputed the contentions raised on behalf of the petitioner by stating that excess pay fixation was fixed in favour of the petitioner over and above the eligibility. Pay fixation was erroneously made by the competent authorities and subsequently an error was identified and the authorities corrected the error and fixed the correct scale of pay as applicable to the petitioner. Regarding the excess pay, the learned Additional Government Pleader made a submission that the pay was erroneously granted and the petitioner is working as Secondary Grade Teacher and therefore, the authorities imposed the recovery.

5.This Court is of the considered opinion that there is no impediment to recover the excess pay already granted to the employees. Unjust enrichment of public money can never be accepted. In case, excess payment has been made to an employee, who is in service and such excess payment was made on account of erroneous fixation, then it is to be recovered by following the procedures contemplated under law. Exceptions are carved out only if extreme hardship is caused to an employee. Courts have repeatedly held that recovery alone can be set aside only if there is an extreme hardship to the employee in the event of any such recovery. Certain exceptions are provided by the Courts in respect of the retired employees belonging to Group III and Group IV employees. However, the Courts



have to consider the facts of each case for grant of such exemptions. It is not as if in all the cases of refixation of pay on account of error, recovery is to be set aside. Only if the Court forms an opinion that recovery would cause hardship to the retired employee or the employee, then alone the recovery is to be set aside, but not otherwise.

6.The principle of law is that the employees can never be allowed to get excess payment, which will result in unjust enrichment of tax payers' money. Therefore, the rule is to recover the excess payment paid to the employees. Exceptions are only in respect of cases where there is an extreme hardship but not otherwise.

7.The Hon'ble Supreme Court emphasised the importance and relevance of the public money and the recovery of excess payment made to the employees in the case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others** reported in (2012) 8 SCC 417.

8.In the present case, the respondents are not disputing the award of Section Grade and Special Grade. However, they are disputing the error occurred in the fixation of pay. However, the error is rectified and correct pay as applicable has been fixed. Consequently, recovery is imposed. Therefore, this Court is of the opinion that the petitioner is not entitled for any unjust enrichment of tax payers' money.

9.The salary attached to the post of Secondary Grade Teacher is undoubtedly decent and in the event of recovery, there is no possibility of extreme hardship to the writ petitioner and therefore, he is not entitled to keep the excess pay already granted to him. The 3rd respondent in her counter also has stated that the wrong scale of pay given to the writ petitioner was 9300 - 34800; Grade Pay - 4800 instead of 5200 - 20200; Grade Pay - 2800. The pay was fixed as per the Tamil Nadu Revised Scale of Pay Rules 2009 and the details regarding the scale of pay applicable to the petitioner have been narrated in para 4 of the counter, which read as follows:-

"4. ... the revised pay structure with effect from 01.01.2006, no separate scales of pay have been provided for Selection Grade / Special Grade holders. The employees on award of Selection Grade / Special Grade in the revised scales of pay have been granted the benefit one increment equal to three percent of basic pay including grade pay in the same Pay Band and Grade Pay. However, in the revised pay structure employees who were awarded Selection Grade/Special Grade prior to 1.1.2006 in the pre-revised scales of pay were granted due protection by allowing them to move to the corresponding revised pay scales by virtue



of the higher pre-revised pay scales drawn by them. Further, in case of employees awarded Selection Grade / Special Grade between 1.1.2006 and 31.05.2009 i.e., prior to the issues of G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009, they were permitted to exercise their option to come over to the revised scales of pay on the date of their award of Selection Grade / Special Grade by foregoing in the arrears entitled to them that employees can opt to remain in the existing scale of pay (pre-revised scale of pay) upto any period of their choice between 1.1.2006 to 31.05.2009 (i.e.) prior to the date of issue of notification of Tamil Nadu revised Scales of Pay Rules, 2009. In the case of the petitioner he moves to Selection Grade on completion of 10 years only on 18.08.2009. Hence he is not covered in the above orders and he should be fixed by giving the benefit of giving 3% of Pay plus GP in the same pay band. However he was given a higher scale of pay for selection grade on 18.08.2009 which is wrong and hence the fixation made in the wrong scale of pay has been cancelled and the amount paid in excess has been ordered recovery. There is no infirmity in the order dated 25.08.2020 made in Mu.Mu.No.787/A2/2020 of the 3rd respondent."

10. In view of facts and circumstances, this Court do not find any irregularity or infirmity in respect of correcting the erroneous scale of pay and the consequential recovery. The respondents are directed to recover the amount by way of instalments.

11. With the above observations and direction, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Director of School Education,
17, College Road, Thousand Lights West,
Thousand Lights, Subba Road Avenue,
Nungambakkam, Chennai-600 008.
2. The Joint Director of School Education,
DPI Complex, College Road,
Chennai-600 006.
3. The Block Educational Officer,
Musiri Block, Musiri Post & Taluk-621211
Tiruchirapalli District.

+1 CC to M/s.SPL GP (SR-14536[F] dated 25/03/2022)

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-14793[F] dated
28/03/2022)

W.P. (MD) No.10808 of 2020
24.03.2022

KG (CO)
KB (04.04.2022) 5P 6C