



W.P.(MD) No.13163 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13163 of 2021

and

W.M.P. (MD) Nos.10166 & 10168 of 2021

WEB COPY

M.Britto Joseph Arockiaraja

... Petitioner

vs.

1.The District Elementary Educational Officer
Ramanathapuram
Now re-designated as District Educational Officer
Ramanathapuram
Ramanathapuram District

2.The Assistant Elementary Educational Officer
Thiruvadanai
Now re-designated as Block Educational Officer-I
Thiruvadanai
Ramanathapuram District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for entire records relating to the impugned recovery proceedings in Na.Ka.No.941/A1/2018, dated 29.12.2017 served to the writ petitioner on 12.03.2021 by the 2nd respondent and quash the same as illegal and consequently to direct the respondents to refix the pay scale of writ petitioner as on August 2017 with all attended monetary benefits forthwith.

For Petitioner : Mr.Kannan.AL.
for Mr.Shanmuganathan.VR.

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

O R D E R

The order of recovery, dated 29.12.2017, issued by the second respondent based on the audit objection is sought to be quashed in this writ petition.

2. The petitioner is working as Headmaster in a Primary School. He submitted an application seeking to step up the pay based on the pay of his Junior. Accordingly, the pay of the petitioner was stepped up by citing the pay of the junior. The said step up of pay was objected by the audit party as the comparison of the petitioner's pay with the junior's pay is improper as junior



and senior cannot be equated in the case of the petitioner. Based on the said audit objection, the impugned order of recovery has been passed.

3. The grievance of the petitioner is that the impugned order was passed based on the representation submitted by him long back and the respondents, with reference to the impugned order, had not given any opportunity. The objection itself was submitted by the petitioner as early as on 21.01.2019 and the impugned order was passed prior to that and there is no reference regarding the earlier objection submitted by the petitioner.

4. This Court is of the considered opinion that if at all any objection was received from the petitioner before passing the impugned order, there must be a reference to that effect in the impugned order, however, no such reference is available in the impugned order. Hence, the objection submitted by the petitioner has to be considered.

5. The learned Additional Government Pleader appearing for the respondents mainly contended that with reference to the audit objection, a show cause notice was earlier issued to the petitioner, enquiry was conducted and explanation was received by the Authority Competent, however, there was a delay in passing the impugned recovery order and after passing the recovery order, another objection was submitted by the petitioner in the year 2019. The facts regarding irregularity in stepping up the pay of the petitioner has been clearly stated by the respondents in their counter affidavit in Paragraph Nos.8 and 9, which reads as follows:

"8. It is submitted that the pay of the junior is more than that of the senior in the lower post, there would be no question of stepping up the pay of the senior in the higher post. It is submitted that after promotion as Head Mistress that junior one Mr.Somasundaram was receiving more pay than the writ petitioner. The writ petitioner was promoted as primary school headmaster without getting the selection grade in the cadre of Secondary Grade Teacher where as said Somasundaram was promoted as primary school head master only after awarded the selection grade in the cadre of Secondary Grade teacher.

9. It is submitted that in the G.O.Ms.No.859, finance (pay cell), department, dated 11.09.1986 paragraph 5 clearly stated that the re-fixation of pay of seniors under this order shall be done by appointing authority. Therefore, in the present case, the 2nd respondent the block education officer herein is not appointing authority that issued the ratification of stepping up of senior



through proceedings in Na.Ka.No.232/A1/2014, dated 19.05.2014 is not sustainable as per G.O.O.Ms.No.859, finance (pay cell) department, dated 11.09.1986. Therefore, the district education officer is the competent authority to set right the pay anomaly and re-fix pay on par with his junior. Hence, the impugned recovery proceedings in Na.Ka.No.941/A1/2017, dated 29.12.2017 is sustainable as per G.O.Ms.No.859, finance (pay cell) department, dated 11.09.1986."

6. Relying on the above contentions, the learned Additional Government Pleader reiterated that the petitioner's pay was erroneously fixed based on the wrong comparison with the alleged junior and therefore, there is no impediment for the Authorities Competent to recover the excess amount.

7. This Court is of the considered opinion that the pay of the petitioner was revised based on the application submitted by him. Though there is no allegation of misrepresentation, the very comparison made by the petitioner seems to be incorrect as per the version of the respondents. When the petitioner himself referred the pay of his junior, whose service cannot be compared along with the service of the petitioner, the pay fixation and excess payment made by stepping up of pay are undoubtedly unjust enrichment, which is to be recovered. If any excess pay was made by wrong comparison or by erroneous interpretation of the Government Order, which resulted an unjust enrichment of the Government employee, such excess payment is to be recovered by issuing a show cause notice to the employee concerned and passing order of recovery by assigning reasons.

8. In the present case, there is no reference regarding show cause notice issued to the petitioner and the objection made by the petitioner. However, the counter affidavit filed by the respondents states that earlier a show cause notice was issued in the year 2017, enquiry was conducted and the objections were recorded. In view of the fact that there is no reference in the impugned order, this Court is inclined to direct the Authority Competent to consider the subsequent representation / objection submitted by the petitioner on 21.01.2019, take a decision and pass a speaking order as to how the petitioner is not entitled for stepping up of pay.

9. It is needless to state that the Competent Authorities are always expected to pass speaking orders. Non-speaking orders are providing unnecessary scope for litigations. Once reasons are assigned, then the employee will also be able to know the correctness or otherwise of the rejection or granting benefits. Thus, the reasons are live-link of the decision taken and hence, the



Competent Authorities are bound to furnish reasons.

10. This being the principle to be followed, the respondents are directed to consider the objections submitted by the petitioner on 21.01.2019 and pass orders afresh assigning reasons for rejection of his claim, within a period of four weeks from the date of receipt of a copy of this order. Till a decision is taken and fresh orders are passed, no coercive action is to be taken to recover the excess amount.

11. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The District Elementary Educational Officer,
Ramanathapuram,
Now re-designated as District Educational Officer,
Ramanathapuram, Ramanathapuram District.

2.The Assistant Elementary Educational Officer,
Thiruvadanai,
Now re-designated as Block Educational Officer-I,
Thiruvadanai,
Ramanathapuram District.

+1 CC to M/s.SPL GP (SR-12225[F] dated 15/03/2022)

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-12320[F] dated 15/03/2022)

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