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W.P.(MD) No.16521 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.16521 of 2020

and

W.M.P. (MD) Nos.13815 & 13816 of 2020

C.Raghavan

... Petitioner

vs.

1.The Principal Accountant General

(Accounts & Entitlement)

No.361, Anna Salai, Chennai-18

2.The Director of Elementary Education

DPI Campus, College Road, Chennai-600 006

3.The Assistant Elementary Educational Officer

Kuzhithurai

Kanyakumari District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in No.P11/2/11119929/ADK, dated 04.04.2017 and consequential order passed by the 3rd respondent in Na.Ka.No.244/E/2017 dated 24.04.2017 and quash the same as illegal and consequently direct the respondents to disburse the entire retirement and pensionary benefits to the petitioner after calculating the petitioner's last drawn pay as Rs.82,400/- (Rupees Eighty Two Thousand and Four Hundred only) and consequently direct the respondents to pay back the recovered amount of Rs.3,36,201/- (Rupees Three Lakhs Thirty Six Thousand Two Hundred and one) to the petitioner with interest, which was recovered based on the impugned orders, within a time frame by this Court.

For Petitioner : Mr.C.Kishore

For Respondents : Mr.P.Gunasekaran for R1

Mr.G.V.Vairam Santhosh

Additional Government Pleader for R2 & R3

O R D E R

The order of re-fixation of pay and the consequential recovery order are under challenge in this writ petition.

2. The petitioner was appointed as Secondary Grade Teacher on 16.02.1983 and he was awarded with selection grade and special



grade in the post of Secondary Grade Teacher. He was promoted as Primary School Headmaster on 18.06.2003 and awarded with selection grade in the post of Primary School Headmaster. Thereafter, he was promoted as Middle School Headmaster on 01.08.2005 and retired from service on 31.05.2017.

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3. The scale of pay and grade pay were fixed to the petitioner and there was an audit objection raised with reference to fixation of grade pay to the petitioner. The Accountant General of Tamil Nadu raised a specific objection that the petitioner is to the grade pay of Rs.4700/- alone as per the fitman table. However, the Authorities have erroneously granted the grade pay, which was sought to be recovered.

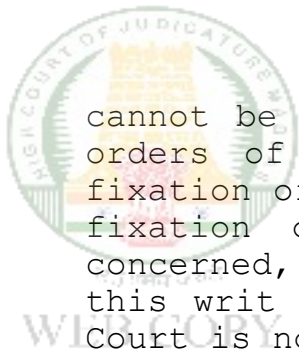
4. The learned counsel for the petitioner states that the impugned order has been passed without providing any opportunity to the petitioner and therefore, it is to be set aside. It is further contended that the enhanced grade pay of Rs.5400/- was paid to some other teacher. Therefore, consistency is to be maintained by the Department.

5. The learned Additional Government Pleader appearing for the respondents 2 and 3 objected the said contention by stating that the grade pay applicable to the petitioner is Rs.4700/- and it was repeatedly reiterated by the Accountant General of Tamil Nadu. The grade pay is applicable to the post in which the incumbent is working. If a grade pay is fixed for a particular post / cadre, then such grade pay alone is to be paid to the holder of such post / cadre.

6. The proceedings of the first respondent reveals that the Government servant holding the post of HM / Middle School (Ordinary Grade), Corresponding Grade Pay 4700/- is only admissible. When such a position is clarified by the Accountant General of Tamil Nadu, based on the said proceedings, the third respondent has issued a consequential order of fixation of pay and recovery.

7. The learned Additional Government Pleader made a submission that the petitioner has voluntarily deposited the recovery amount on 27.04.2017 itself. Though the petitioner states that he has deposited the amount with protest, the fact remains that he has filed this writ petition after a lapse of 3 ½ years from the date of issuance of the impugned orders. Thus, the writ petition is liable to be dismissed on the ground of laches.

8. In the event of voluntarily depositing the recovery amount in the year 2017 and filing a writ petition in the year 2020 by the petitioner, the inference to be drawn is that he himself has deposited the recovery amount and furthermore, a writ petition



cannot be entertained after a lapse of 3 ½ years from the date of orders of pay re-fixation and recovery. With reference to the fixation of pay is concerned, there is no infirmity as the defective fixation of pay was corrected and in respect of recovery is concerned, the petitioner has deposited the said amount and filed this writ petition after a period of 3 ½ years and therefore, this Court is not inclined to entertain this writ petition.

9. Accordingly, the writ petition is dismissed on the ground of laches. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Principal Accountant General.
361,Anna Salai, Chennai-18.

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

3.The Assistant Elementary Educational Officer,
Kuzhithurai,
Kanyakumari District.

+1 CC to M/s.C.KISHORE, Advocate (SR-13597[F] dated 22/03/2022)

+1 CC to M/s.SPL GP (SR-13460[F] dated 22/03/2022)

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and

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MGJ(30.03.2022) 3P 6C