



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.21858 of 2019

and

W.M.P(MD)Nos.18608 and 18610 of 2019

P.L.Muthu

... Petitioner

Vs.

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Block Development Officer,
Panchayat Union,
Annavasal,
Pudukkottai District.

3.The Commissioner,
Annavasal Panchayat Union,
Annavasal,
Pudukkottai District.

... Respondents

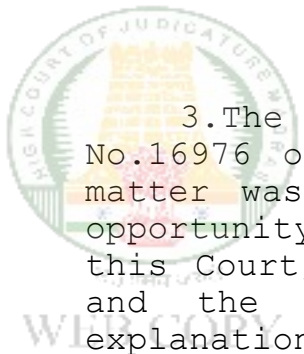
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent in Na.Ka.A1/4205/2015, dated 25.06.2019 and to quash the same and consequently to direct the respondents to pay the arrears of salary as per the order passed by the third respondent in his proceedings in Na.Ka.A1/5478/2013, dated 4.8.2014.

For Petitioner : Mr.P.Saravana Kumar
for M/s.M.Siddharthan
For R1 to R3 : Mr.D.Sadiq Raja
Addl.Govt.Pleader

ORDER

The order impugned dated 25.06.2019 is sought to be quashed in the present writ petition. Further direction is sought to direct the respondents to pay the arrears of salary as per the order passed by the third respondent in proceedings, dated 04.08.2014.

2.The petitioner states that he is now working as a skilled Assistant in Annavasal Panchayat Union. Based on the audit objection regarding the fixation of pay in the promotional post of Instructor, the impugned order of revision of pay and recovery was issued.



3.The writ petitioner earlier filed a writ petition in W.P(MD) No.16976 of 2015 and the said writ petition was allowed and the matter was remanded back for issuing a show cause notice and an opportunity to the petitioner. Pursuant to the direction issued by this Court, a show cause notice was issued to the writ petitioner and the writ petitioner states that he has submitted his explanation. However, the respondents denied the same and filed a counter affidavit stating that the petitioner has not submitted any explanation to the show cause notice. However, the petitioner has received the show cause notice.

4.The audit objection was raised, mainly on the ground that the post of Instructor is a vanishing post and the petitioner came to Annavasal Panchayat Union only on 04.12.1997 and therefore, he cannot claim any promotion with retrospective effect. In view of the fact that the post of Instructor is a vanishing post, the promotion in the Panchayat Union can be granted only by the District Collector.

5.This being the rule and the factual position, the petitioner got promotion with retrospective effect and his pay was revised and he received arrears of pay of Rs.12,40,515/- in five installments in proceedings, dated 04.08.2014. The monthly salary was given in the cadre of Instructor from 01.08.2014 to 01.01.2016 which works out of Rs.3,20,637/- and the arrears of pay of Rs.2,48,065/- was paid to the petitioner in one installment. Totally an amount of Rs.5,68,702/- was paid to the petitioner.

6.Incidentally, the petitioner came to Annavasal Panchayat Union only on 04.12.1997. However, he was granted promotion with retrospective effect from 14.12.1989. Under these circumstances, the audit party found that the payment of arrears with retrospective effect and fixation of pay retrospectively and claiming of huge arrears from the Panchayat Union was raised as an audit objection and the impugned order of revision of pay and recovery was imposed. The earlier writ petition was filed on the ground of no opportunity was provided. However, the respondents issued a show cause notice and it is relevant to extract Para Nos.6 and 7 of the counter affidavit, wherein the respondents have explained the proceedings having followed for the purpose of issuing the impugned order.

"6.It is submitted that in view of the order passed by this Hon'ble Court an amount of Rs.1,26,414/- recovered from the petitioner based on the recover order dated 28.07.2015 was returned to the petitioner by two installments on 16.06.2017 and 14.07.2017. Thereafter, the notice dated 07.08.2017, 01.12.2017 and 06.03.2018 were given to the petitioner seeking for the explanation as to why the amount disbursed to the petitioner was not recovered? After receipt of the notice, the petitioner did



not appear and give any explanation in this regard. In these circumstances, the petitioner filed the Contempt Petition (MD) No.597 of 2018 before this Hon'ble Court.

7.I humbly submit that the petitioner was given notices on 15.03.2016, 31.03.2016, 22.04.2016 requesting to bring the all records with regard to Audit Para Objection. Having receipt of the same, the petitioner has not given any explanation. Therefore, a final order was passed by proceeding dated 25.06.2019. The final order dated 25.06.2016 with regard to the recovery of amount was served to the petitioner through the Office Assistant by name Tmt.V.Parimaladevi. However, the petitioner refused to receive the same on 28.06.2019. It is submitted that this respondent requested the petitioner to receive the final order dated 25.06.2019, but he refused to receive the same on 28.06.2019, and hence, the same was affixed at his door."

7.In view of the facts and circumstances, this Court is of the opinion that grant of retrospective promotion in the post of Instructor was in violation of rules and further, such appointment was granted by an incompetent authority and the District Collector alone is the competent. However, revision of pay and claiming of arrears created not only huge monthly loss to the Panchayat, but, it is an unjust enrichment for the petitioner. Therefore, this Court does not find any infirmity or perversity in the order impugned passed by the respondents. The respondents are directed to take immediate steps to recover the entire excess payment from the petitioner.

8.Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Pudukkottai District,
Pudukkottai.



2.The Block Development Officer,
Panchayat Union,
Annavaasal,
Pudukkottai District.

3.The Commissioner,
Annavaasal Panchayat Union,
Annavaasal,
Pudukkottai District.

+1 CC to M/s.SPL GP (SR-6210[F] dated 15/02/2022)

ORDER MADE IN
W.P. (MD) No.21858 of 2019
and
W.M.P (MD) Nos.18608 and
18610 of 2019
14.02.2022

SAR (CO)
GC (25.02.2022) 4P 5C