



W.P.(MD)No.4344 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4344 of 2017 and
W.M.P(MD)Nos.3493, 12667 of 2017

J.George Simeon Packiya Seelan

... Petitioner

vs.

1. The District Elementary Educational Officer,
Thoothukudi.

2. The Additional Assistant Elementary Educational Officer,
Ottapidaram Region, Thoothukudi District.

3. The Correspondent,
TNDTA Primary and Middle Schools,
Calledwell Higher Secondary School Campus,
Tuticorin Nazareth Diocese, Thoothukudi

... Respondents

[3rd Respondent is impleaded as per Order of this Court dated 04.11.2022]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of ***Certiorari***, to call for the records relating to the impugned order, dated Nil.02.2008 in Na.Ka.No.560/A1/07 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.V.Sasi Kumar

For Respondents : Mr.V.Omprakash

Government Advocate (Civil Side)



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ORDER

This Writ Petition is filed for issuing Writ of *Certiorari*, to quash the impugned order, dated Nil.02.2008 in Na.Ka.No.560/A1/07 issued by the 2nd respondent.

2. Heard Mr.V.Sasi Kumar, learned counsel appearing for the petitioner and Mr.V.Omprakash, learned Government Advocate (Civil Side). Perused the material documents available on record. The Correspondent, TNDTA Primary and Middle Schools, is impleaded as 3rd respondent.

3. The petitioner was appointed on 05.06.1993 and subsequently, promoted as Primary School Head Master on 08.06.1993 in TDTA Middle School and promoted as Middle School Headmaster on 01.02.2008 in TNDTA (Thoothukudi Nazereth Diocese Trust Association), Marthandm Patti, Vilathikulam Taluk, Thoothukudi. The petitioner has completed B.Sc., Degree in the year 1980 and thereafter, obtained B.Ed. in the year 1984. Though, the petitioner was promoted as Headmaster of Primary School and thereafter, as Middle School, the petitioner has received salary of Headmaster of Primary



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School and Middle School and have not received incentive for Graduate Teachers. The Director of School Education, by his proceedings, dated 12.04.1988, held that in case of Minority Institution the Teacher working as a Headmaster need not have 5 years experience as Secondary Grade Teacher. Thereafter, **G.O.Ms.No.97, dated 05.07.2001** was issued by the School Education Department, to that effect relaxing the 5 years experience in Secondary Grade Teacher for appointment to the post of Middle School Headmaster. But, the 2nd respondent, vide proceedings, dated Nil.02.2008 had ordered for recovery of a sum of Rs.1,41,703/-, in pursuant to the Audit report conducted from 01.02.2007 to 16.03.2007.

4. The contention of the petitioner is that, though the petitioner was appointed as Headmaster on 08.06.1993, the impugned order of recovery was passed after the period of 15 years. As per order, dated 08.02.2005 passed in **W.P.No.3635 of 1998** in the case of **K.R.Chitra Vs. Tamil Nadu Government, Rep. by its Secretary**, the Madras High Court by relying upon the Judgment of the Hon'ble Supreme Court in the case of **Shyam Babu Verma Vs. Union of India, reported in 1994 (2) SCC 521**, has held that at time of their appointment the



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authorities were aware that the petitioners therein were not having a required qualification and inspite of the same, appointments were made and after long years of service the benefits cannot be denied. Now, the respondents are taking steps to implement the order for recovery of Rs.1,41,703/-on the verge of the petitioner's superannuation. Aggrieved over the same, the instant Writ Petition is filed.

5. This Court has granted interim stay for recovery alone, vide order, dated 15.03.2017. The respondents have filed counter along with vacate stay petition. As per annexure III, under Rule 8 of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, the qualifications prescribed for the post of Headmaster, Primary School are as follows:

- 1.S.S.L.C
- 2.T.S.L.C or Secondary Grade of its equivalent and
- 3.Should have worked as teacher in a recognized school for a period of not less than five years after obtaining the TSLC or Secondary Grade or its equivalent.



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However, the petitioner was appointed as Headmaster in Primary School on 08.06.1993, without five years experience as Secondary Grade teacher, the scale of pay for the post of Secondary Grade Teacher from 01.06.1988 is Rs.1200-30-1560-40-2040. The scale of pay for the post of Headmaster, Primary school from 01.06.1988 is Rs.1600-50-2300-60-2300. The post of Headmaster, Primary School is a promotional post carrying higher scale of pay than that of the scale of pay fixed for the post of Secondary Grade Teacher. However, the petitioner was wrongly granted salary in the scale of pay of Primary School Headmaster, from 08.06.1993 to 04.06.1998, instead of Secondary Grade Teacher Scale of pay, even though he is not qualified to hold the post of Primary School Headmaster, since the petitioner was not having five years service experience as on the date of his appointment. Then the petitioner is entitled to Secondary Grade Scale of pay till he completed five years service in the post of Secondary Grade Teacher. The petitioner is entitled to Primary School Headmaster salary only after completing five years of service in the post of Secondary Grade post. The excess salary of Rs.1,41,703/- paid for the period from 05.06.1993 to 04.06.1998 was detected by the Audit during the course of Audit of the 2nd respondent office for a period from 01.04.1998 to 28.02.2007. The above said over payment made to the



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petitioner is ordered to be refunded, vide the impugned proceedings. However, the petitioner has evaded to repay the over drawn amount so far. The writ petition is filed after lapse of nine years. The petitioner has filed the present writ petition after reaching his superannuation, just to avoid the recovery of overpayment made from his terminal benefits. The petitioner is bound to repay the excess drawn salary, therefore, the respondents prayed to dismiss the Writ petition.

6. The learned counsel appearing for the petitioner submitted that, similarly placed persons were granted the entire benefits without any detection and therefore, prayed to allow the writ petition and to grant benefits that was granted to the similarly placed persons. It is an admitted fact that the primary school Headmaster post is a promotional post from 01.06.1988. The qualification prescribed under the rule is completion of SSLC and the candidate ought to have completed five years in the post of Secondary Grade Teacher. The petitioner was appointed as Secondary Grade Teacher on 05.06.1993, within three days, the petitioner was appointed as Primary School Headmaster. The petitioner was continuing in the said post without any experience. The very appointment itself is illegal and several school appointed such legal appointment. Therefore, the



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Government has come forward to resolve this issue, thereby, concession was granted to the such appointees. The said candidates were allowed to continue in the said Primary School Headmaster post and they will be drawing salary applicable to the Secondary Grade Teacher post. The school deliberately has raised the bill and withdrawn the scale of pay that is applicable to the Primary School Headmaster and paid the said salary. Admittedly, the petitioner was serving in T.D.T.A. Primary School which is a Corporate management, where several schools are being running under the said management. Since the management is running several schools and the management is very well aware that the present appointment by the management is absolutely illegal. The Government has granted concession only to accommodate such teachers and they were allowed to continue in the Secondary Grade Teacher salary. Since “Grant-in-Aid” is granted to the schools based on the bills that was raised by the school and the school management ought not to have raised such illegal bill.

7. In view of the above, this Court is of the considered opinion that the school management has committed illegality and caused loss to the public exchequer. If the petitioner is aggrieved by the impugned order, the petitioner



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ought to collect the said amount from the management only. The Government cannot be made to suffer loss. Infact, the petitioner also very well aware that he is not having five years experience as Secondary Grade Teacher. Therefore, this Court fixes the liability both on the school management and the teacher and directs the management to return the amount to the tune of Rs.70,852/- (50% of the quantified amount) to the Government's exchequer and the petitioner shall remit Rs.70,851/- (50% of quantified amount) to the Government's exchequer. If the said amount is not remitted by the petitioner, the official respondents shall recover the same from the petitioner's terminal benefits. If the management has not repaid the amount, the official respondents shall recover from the future grant-in-aid that would be paid to the school.

8. With the above direction, this Writ Petition is disposed of.

No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The District Elementary Educational Officer,
Thoothukudi.
2. The Additional Assistant Elementary Educational Officer,
Ottapidaram Region,
Thoothukudi District.



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S.SRIMATHY, J

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Order made in
W.P.(MD)No.4344 of 2017
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