



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD) No.22128 of 2021

&

WMP (MD) Nos.18721 & 18717 of 2021

Gunavathi

... Petitioner

Vs.

1.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

2.The Head Master,
Government Higher Secondary School,
Jogilpatti,
Aruppukottai Taluk,
Virudhunagar District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the first respondent in his proceedings in Na.Ka.No.8218/E1/2021(Serial No.4) dated 01.12.2021 and quash the same as illegal, arbitrary, violation of principles of natural justice.

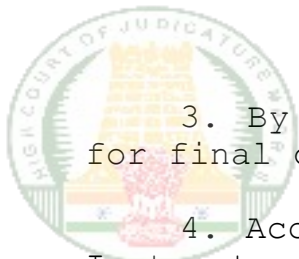
For Petitioner : Mr.M.Jothi Basu

For Respondents : Mr.S.Saji Bino, Spl.GP

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorari, to call for the records of the first respondent in his proceedings in Na.Ka.No.8218/E1/2021(Serial No.4) dated 01.12.2021 and quash the same as illegal, arbitrary, violation of principles of natural justice.

2. Heard Mr.M.Jothi Basu, learned counsel appearing for the petitioner and Mr.S.Saji Bino, learned Special Pleader appearing for the respondents.



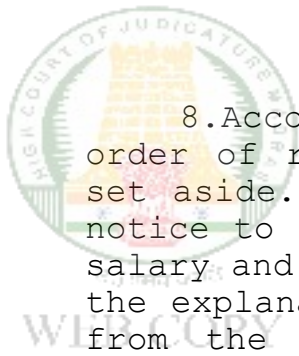
3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. According to the petitioner, he was appointed as a Computer Instructor. The Principal Secretary to Government issued a G.O.Ms.No.26, 12.02.2019, wherein, 8 years of minimum years of service is fixed as a criteria for consideration to the post of Computer Instructor Grade I. This was challenged before this Court in a Writ Petition, which came to be allowed. Consequently, another G.O.Ms.No.103, dated 05.11.2020 was issued, deleting the criteria of minimum 8 years of experience for promotion to the post of Computer Instructor Grade-I. Later, the petitioner was promoted to the post of Computer Instructor Grade-I and his salary was also revised from 12.02.2019 onwards. While so, the 1st respondent without giving any opportunity, passed orders impugned in the Writ Petition, ordering recovery of amount that has been paid to 26 Computer Instructors Grade-I, including the petitioner. Challenging the same, the petitioner has come forward with the present Writ Petition.

5.The learned counsel for the petitioner would submit that the petitioner is entitled to the promotion to the post of Computer Instructor Grade I and accordingly, he was rightly promoted and revised his salary also. However, without affording an opportunity, the 1st respondent has revised the scale of pay and passed impugned order of recovery, which is liable to be set aside.

6.The learned Special Government Pleader would submit that it is not a promotional post to which, the petitioner was promoted, but it was only an upgraded one since originally, the respondents have appointed Computer Instructor Grade II and subsequently, the Government has decided to fill up the posts of Computer Instructor Grade I. This was objected by the Grade I Instructors by way of a Writ Petition and this Court also held that it was only a upgradation post and not a promotional post, however, the salary has been wrongly fixed in respect of the petitioner as that of promotional post. Pursuant to the same, the first respondent has passed the impugned order of recovery and thereby set right the mistake crept in. Therefore, the learned Special Government Pleader would submit that there is no infirmity in the impugned order in order to interfere with the same.

7.Though the respondents claim that the pay of the petitioner has been wrongly fixed by treating the upgradation post as that of promotional post and set right the mistake crept in by way of impugned order, the fact remains that the petitioner was not provided an opportunity before passing the impugned order, which is adverse to the petitioner. Therefore, on the ground of violation of principles of natural justice, this Court is of the view that the impugned order is liable to be set aside.



8. Accordingly, the Writ Petition is allowed and the impugned order of recovery dated 01.12.2021 passed by the 1st respondent is set aside. However, the respondents are at liberty to issue prior notice to the petitioner and pass orders as regards the revision of salary and recovery of the amount after taking into consideration of the explanation from the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

2.The Head Master,
Government Higher Secondary School,
Jogilpatti,
Aruppukottai Taluk,
Virudhunagar District.

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-520[F] dated 06/01/2022)

+1 CC to M/s.SPL.GP (SR-581[F] dated 06/01/2022)

W.P (MD) No.22128 of 2021
05.01.2022

MGJ(08.02.2022) 3P 5C