



W.P. No.15355 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

20.12.2023

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THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.15355 of 2019

and

W.M.P.No.15338 and 15539 of 2019

D. Gandhi

... Petitioner

Vs.

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

2. The Headmaster,
Govt. boys Higher Secondary School,
Tirupattur, Vellore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned orders passed by the second respondent in his proceedings vide Na.Ka.No.59/ 2018 dated 11.09.2018 and consequential order passed by the first respondent by his proceedings bearing Na.Ka.No.8386/E1/2019 dated 11.03.2019 and quash the same.



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For Petitioner : Mr.G. Sankaram,Senior Counsel
for M/s.G. Venkateswaran
For Respondents :Mr. T.M.Rangarajan
Government Advocate

ORDER

This writ petition is filed praying for a writ of Certiorari calling for the records relating to the impugned orders passed by the second respondent in his proceedings vide Na.Ka.No.59/ 2018 dated 11.09.2018 and consequential order passed by the first respondent by his proceedings bearing Na.Ka.No.8386/E1/2019 dated 11.03.2019 and quash the same

2. The facts of the case is that the petitioner was appointed as physical Education teacher on 05.06.2002 and posted to the Don Bosco Higher Secondary School Aided). Such appointment of the petitioner was approved by the District Educational Officer, Udayarpalayam. At the time of appointment of the petitioner, his scale of pay was fixed at Rs.15,140-750 GP. While so in the year 2012, upon completion of 10 years of service, the petitioner was conferred with selection grade in the post of physical Education teacher. Whiles, the petitioner was selected for appointment to the post of Physical Education Teacher in the Government Boys Higher



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Secondary School, Madavalam, Vellore District which was duly approved by the Joint Director of School Education, Chennai-600 006 vide proceedings in Na.Ka.No.85023/C5/E4/2012 dated 24.11.2012. When this being the case, the second respondent vide proceeding in Na.Ka.No.59/2018 dated 11.09.2018 revised the ordinary scale of pay to the petitioner from the selection grade scale of pay. Further more the first respondent in his proceedings vide Na.Ka.No.8386/E1/2019 dated 11.03.2019 passed an order to recover the excess amount paid towards selection grade. Hence to quash the proceedings issued by the first and second respondents, the petitioner has come up with this petition.

3. The learned counsel for the petitioner submitted that the G.O.Ms.No.1296 dated 19.06.1982 provides that the Selection Grade/Secondary Grade Teachers, if they migrate from one management to different management i.e from a panchayat Union school or from a municipal school or from an aided school to another management or vice versa, be allowed the minimum of the time scale of pay of selection grade/secondary grade post if they are appointed in a secondary grade post.



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He further submitted that as per G.O.Ms.No.1072 P & AR (FR.111)

Department dated 31.10.1986 it was stated that if an officiating Government in a post who has no substantive appointment is discharged from service for want of vacancy he shall re-appointment to the same post, draw the pay last drawn prior to discharge from the service. The period prior to the discharge from service shall count for purpose of future increment in the time scale of that post. As per the above said Government Orders, the petitioner is entitled to draw the selection grade pay from the date of joining as PET in the respondents school as per the proceedings of the Teachers Recruitment Board.

4. *Per contra* the learned Government Advocate appearing for the respondents would submit that they have filed a detailed counter wherein it has been stated that the pay fixed by the first Respondent is totally erroneous and contrary to his appointment and other conditions. The excess payment of public money which is often described as “ Tax Payers” money which belongs to neither to the officers who have affected the overpayment nor the recipients and hence the concept of fraud or mis-representation is



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being brought in such situations. Hence any amount paid/received without the authority of law can always be recovered.

5. Heard the learned counsel appearing for both sides and perused the materials placed on record.

6. It is to be noted that after filing of this petition the petitioner had collected the case bundle from the counsel on record. On verification of records it is seen that no one else has entered appearance on behalf of the petitioner till the year 2021. Since there was no representation on behalf of the petitioner, the learned single Judge of this Court made an observation that there was no purpose in keeping this bundle and dismissed this petition for non-prosecution. Thereafter the petitioner has filed a W.M.P.24516 of 2023 to store the present petition and on being satisfied with the affidavit filed in support of the said petition, the same was allowed by an order dated 25.08.2023.



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7. On a perusal of records it is seen that the petitioner has completed 10 years of service without any break and only on completion of 10 years of service only the petitioner was granted selection grade by the District Educational Officer. Whiles, the order passed by the first respondent in Na.Ka.No.59/2018 dated 11.09.2018 to revise the salary to ordinary pay and the order passed by the second respondent in Na.Ka.No.8386/E1/2019 dated 11.03.2019 to recover the excess amount paid towards selection grade scale of pay is against the principles of natural justice.

8. To arrive at a better conclusion this Court has perused the Service records of the petitioner wherein the Headmaster of the Government Boys Higher Secondary School, Madavalam, Vellore District has mentioned that considering the period of service rendered by the petitioner he is eligible for selection grade and the pay benefits has to be paid to him as per the selection grade. On considering the contention made by the respondents it is seen that they are objecting to migrate the teachers from aided school to the Government school. It is a well established fact that any teacher, who



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worked in aided school, would always like to migrate to Government Service for betterment of their service benefits and career.

9. At this juncture it is relevant to refer to the Order passed by this Court in W.P.No.32645 of 2018 on 16.07.2019 wherein this Court while dealing with the identical facts of the case has allowed the writ petition.

10. In view of the above discussions and considering the relevant orders passed by this Court and also taking note of the Service records of the petitioner this Court issues a direction to the second respondent to take necessary steps to refund the amount deducted from the petitioner.

11. This writ petition is allowed and the impugned order passed by the first and second respondents are hereby quashed. No order as to costs. Consequently connected miscellaneous petition are closed.

20.12.2023

Speaking (or) Non Speaking Order

Index : Yes/ No

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To:

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Vellore, Vellore District.
2. The Headmaster,
Govt. boys Higher Secondary School,
Tirupattur, Vellore District.



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V.BHAVANI SUBBAROYAN, J.

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