



W.P.No.16471 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.10.2023
Pronounced on	06.11.2023

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.16471 of 2020 and
W.M.P.No.20442 of 2020

K.Subramanian

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep by its Principle Secretary,
Finance (CMPC) Department,
Fort St.George, Chennai 600 009.
- 2.The Director of Elementary Education,
College Road, Chennai 600 006.
- 3.The District Elementary Educational Officer,
Palacode, Dharmapuri District.
- 4.The Block Educational Officer,
Karimangalam – 635 111,
Dharmapuri District.
- 5.The Principal Accountant General,
(Accounts & Entitlements) Tamil Nadu,
No.361, Anna Salai,
Teynampet, Chennai 600 018.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the 5th respondent in his proceedings A.G.A&E Legal Cell/WP No.32457-2015/2020-21/642-21914 dated 24.09.2020 and quash the same.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.T.Chezhian for R1 to R4
Ms.J.Sreevidya for R5

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorari to call for the records pertaining to the order passed by the 5th respondent in his proceedings A.G.A&E Legal Cell/WP No.32457-2015/2020-21/642-21914 dated 24.09.2020 and quash the same.

2. Heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.T.Chezhian, learned counsel appearing for the respondents 1 to 4 and Ms.J.Sreevidya, learned counsel for the fifth respondent.

3. The brief facts of the case are as follows:

The petitioner was appointed as a Secondary Grade Assistant on



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31.03.1982. He was given with selection grade on 31.03.1992. He was posted as Panchayat Union Elementary School Headmaster on 07.12.1994. On 31.03.2002, he was given with selection grade pay in the cadre of Elementary School Headmaster. Thereafter, he was promoted to the post of Headmaster of Panchayat Union Middle School. The petitioner got retired from service on 30.06.2013. Thereafter he was given with extension till 31.05.2014.

3.1. On 19.03.2014, the fifth respondent issued an order for revising the pension of the petitioner and accordingly, the fourth respondent issued orders on 03.07.2014 by stating that the petitioner is eligible to draw pension with the pay band of Rs.15600-39100-5400/-. Again on 08.10.2014, the fifth respondent issued revised orders by stating that the petitioner has been inadvertently paid pension by taking into account of the last drawn grade pay of Rs.5,400/-. Once again the petitioner made a representation. But the Assistant Treasury Officer has not considered even the clarification given by the petitioner's employer and rejected the same.



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4. The respondents 1 to 4 filed a counter and in the counter, it is stated as per G.O.Ms.No.590, Finance (Pay Cell) Department dated 01.08.1992, as under:

“An employee holding the Special Grade of a lower post, when promoted to a higher post, which carries a lower scale of pay than that of the special grade scale of pay of the lower post, be allowed to have his pay fixed in the scale of pay of the promotion post as per Fundamental Rules taking into account the presumptive pay admissible in the Selection Grade scale of pay of the lower post on the date of promotion or shall be allowed to continue to draw his pay in the special grade scale of pay of the lower post as personal to him and one increment benefit in the fixation of pay in special grade scales of pay of the lower post be granted to him on the date of his promotion. Employees shall exercise their option within a period of one month from the date of promotion.”

4.1. The other pensioners were drawing their pay in the pre-revised pay scale of Rs.8000-275-13500 for which the grade pay of Rs.5,400/- is admissible as on 01.01.2006. Whereas the petitioner was in the pre-



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revised pay scale of Rs.6500-200-10500/- only. As per the prevailing Rules, the Government Orders and clarifications issued thereunder, the petitioner's claim for a higher grade pay of Rs.5,400/- cannot be entertained.

4.2. As per Rule 56 of the Tamil Nadu Pension Rules, if excess payment of pension made thereon is found by the Audit Officer, the pensioner shall be requested to refund the excess payment of pension with due notice served to him. Hence the orders were issued for recovery. Since the petitioner is not eligible to get fixation of grade pay of Rs.5,400/- and he is entitled to get grade pay of Rs.4,700/- only, the fifth respondent Audit Officer found out the erroneous fixation and validly issued the impugned order.

5. The fifth respondent filed counter and stated that the petitioner's claim is to fix his pay in the revised pay band as per G.O.Ms.No.234 dated 01.06.2009 read with G.O.Ms.No.23 dated 12.01.2011 and the subsequent letter No.14483/CMPC/2011-1 dated 05.01.2012 in the pay band of Rs.15600-39100 + Grade Pay of Rs.5400/- as on 01.01.2006



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which is applicable to the selection grade Primary School Headmaster, though he was holding the post of Middle School Headmaster as on 01.01.2006. The pre-revised scale of pay and revised pay band of Primary School Headmaster and Middle School Headmaster as per Tamil Nadu Revised Scale of Pay Rules 2009 and the subsequent Government Orders / clarifications are as under:

Post	Pre-revised Scale of pay (Rs.)	As per G.O.No.234, dated 01.06.2009 (Rs.)	As per G.O.No.23, dated 12.01.2011 read with letter dated 05.01.2012 (Rs.)
PSHM	5300-150-8300	9300-34800 + GP 4300	9300-34800 + GP 4500
Selection Grade PSHM	6500-200-10500	9300-34800 + GP 4600	15600-39100 + GP 5400
MSHM	5900-200-9900	9300-34800 + GP 4500	9300-34800 + GP 4700

5.1. The petitioner was promoted as Middle School Headmaster on 18.04.2005 prior to the introduction of Tamil Nadu Revised Scale of Pay Rules 2009 which was implemented with effect from 01.01.2006. His pre-revised scale of pay was Rs.6500-200-10500, as selection grade Primary School Headmaster till 17.04.2005. That means, it was prior to



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his promotion to the post of Middle School Headmaster.

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5.2. But the post of Middle School Headmaster carried a pre-revised scale of pay of Rs.5900-200-9900 which is lower than the selection grade of Primary School Headmaster. So the petitioner availed the benefit of G.O.Ms.No.590 dated 01.08.1992 and thus continued to draw higher pay applicable to selection grade Primary School Headmaster, even though he was promoted as Middle School Headmaster. As opted by him, the date of next increment was 01.07.2005. Thus the petitioner had availed the pay protection given to him.

5.3. As per Schedule I of G.O.Ms.234 dated 01.06.2009, the revised pay band applicable to Middle School Headmaster corresponding to the pre-revised scale of pay of Rs.5900-200-9900 is Rs.9300-34800 + grade pay of Rs.4500/-. Subsequent to the issuance of G.O.Ms.No.23, Finance (Pay Cell) Department dated 12.01.2011, the above pay scale was revised to Rs.9300-34800 + Grade Pay Rs.4700/- as per the One



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Man Commission's recommendation. Since the petitioner has got the pay protection in the pre-revised pay itself, his pay has to be fixed in the revised pay band of Rs.9300-34800 + GP 4700/- applicable to Middle School Headmaster as on 01.01.2006 by multiplying the pay drawn by him as on 31.12.2005 by applying the factor 1.86. This is in accordance with G.O.Ms.No.234 dated 01.06.2009 applicable to Tamil Nadu Revised Scales of Pay Rules 2009.

5.4. It is clarified in the Government Letter No.10135/CMPC/2013-01 dated 04.10.2013, the Finance (CMPC) Department that the selection grade Primary School Headmasters who were promoted as B.T.Assistant prior to 01.01.2006 from the post of selection grade Primary School Headmaster / Special Grade Primary School Headmaster and continued to retain higher scale of pay in the lower post and got fixation in the revised scale of pay with effect from 01.01.2006 as per G.O.Ms.No.234 dated 01.06.2009 shall not be entitled for higher grade pay applicable to the selection grade or the special grade of the substantive post consequent to the order issued in G.O.No.23 dated



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12.01.2011. Hence the petitioner's claim for fixing his pay in the pay band applicable to the selection grade Primary School Headmaster on 01.01.2006 is not tenable.

5.5. The other persons who were moved to special grade in the post of Primary School Headmaster will be drawing a pay scale of Rs.8000-275-13500 prior to their promotion as Middle School Headmaster. Whereas the post of Middle School Headmaster carried a lower scale of pay of Rs.5900-200-9900. Since pay protection were available to them as on 01.01.2006, their pay shall be fixed in a revised pay band at Rs.15600-39100 + Grade Pay 5400 (corresponding to Rs.8000-275-13500). Hence the revision under G.O.Ms.No.23 would be applicable for pay band of Rs.9300-34800 + Grade Pay 4700 only.

5.6. The petitioner was not awarded with special grade in the post of Primary School Headmaster prior to the promotion as Middle School Headmaster. He was drawing pay in the pre-revised scale of Rs.6500-200-10500 and the corresponding revised pay is Rs.9300-34800 + Grade



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Pay of Rs.4600/-. Any excess payment of public money or tax payers money to the Government Servants should be recovered. So any amount paid or received without authority of law should be recovered barring few exceptions of extreme hardships but not as a matter of right. In such situation, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. Therefore, the petitioner's claim for fixation of pay as on 01.01.2006 in the higher pay band of Rs.15600-39100 + Grade Pay 5400/- is not supported by any of the Government Orders and or by the judicial decisions and hence it is not tenable.

6. The long and short point involved in the present Writ Petition is about the disentitlement of the petitioner to get the benefit of G.O.Ms.No.23 dated 12.01.2011. This is obviously because the petitioner had opted to retain his scale of pay applicable to his previous post of selection grade of Primary School Headmaster. After he was promoted as B.T.Assistant, the petitioner availed the benefit of G.O.Ms.No.590 dated 01.08.1992 and thereby got the pay protection. An One Man Commission



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was appointed to allay the pay anomalies subsequent to the pay revision and the One Man Commission's recommendations were implemented by the Government under G.O.Ms.No.23, dated 12.01.2011. The grade pay of Rs.5400/- is applicable as per G.O.Ms.No.23, dated 12.01.2011, only to those persons who retain the higher pay in the scale of pay of Rs.8000-275-13500 as on 01.01.2006. Since the petitioner was getting pre-revised scale of Rs.6500-200-10500 his pay band is fixed at Rs.9300-34800+Grade Pay 4700/-. This is because of the following clarification issued by the Government in its letter No.10135/CMPC/2013-1 dated 04.10.2013, the Finance (CMPC) Department as under :

“.....The employees/teachers who have been promoted to higher post prior to 01.01.2006 and continued to retain the higher scale of pay of the substantive post by applying of G.O.No.590 dated 01.08.1992 have already availed the fitment benefit of fixation of pay by applying 1.86 factor in the revised scale of pay with effect from 01.01.2006 by taking into account the substantive pay in the pre-revised scale of pay as on 31.12.2005. Therefore, they are not entitled for higher grade pay applicable to the Selection Grade / Special Grade of the substantive post, that is, lower post consequent on the subsequent revision of



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pay made to such categories.”

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7. Since the petitioner's pay has already been revised corresponding to his pre-revised scale of pay of Rs.6500-200-10500, the grade pay of Rs.5,400/- is not applicable to the case of the petitioner. So it is due to the exercise of option by the employee when he reaches a different pay band on promotion or pay revision. In view of the above reasons, sometimes junior might get more pay than the senior. In such case, the aggrieved has got right to step up the difference, if he could make out a case for anomaly. In the present case, the petitioner who had opted to retain his earlier scale of pay even after getting promoted as B.T.Assistant (i.e) Middle School Headmaster, had availed the benefit once. So it was rightly pointed out during the audit that the grade pay was fixed excessively and thus, the recovery order has been issued.

8. However, the petitioner is a pensioner and the excess payment received by him was not due to his default. The petitioner may not be in a position to repay the excess amount which was caused due to the fault of the authorities. However, the revised pension is applicable and the petitioner has to understand that the earlier error has been now rectified



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and that had caused the reduction in the grade pay for the purpose of calculating the pension.

9. However in the matter of recovery, the respondents have to follow the principles of *White Washer* case. Since the petitioner is a retired employee and the mistake of excess payment is not at his default, no recovery shall be made from the petitioner. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Masih (White Washer) etc.* reported in (2015) 4 SCC 334 in which it is held as under:-

“18. It is not possible to postulate all situation of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).



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(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) in any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

10. The benefit of the above judgment would also be available to the petitioner, who is a retired employee. So, I feel it is appropriate to quash the impugned order only in respect of recovery.



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11. Hence, this Writ Petition is partly allowed with a direction

that the respondents shall not recover the excess payment so far made to the petitioner. Consequently, connected miscellaneous petition is closed.

No costs.

06.11.2023

Index : Yes

Internet : Yes

Speaking

Neutral Citation : Yes

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To

- 1.The Principle Secretary,
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Finance (CMPC) Department,
Fort St.George, Chennai 600 009.
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R.N.MANJULA, J.

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