



W.P.No.24603 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.24603 of 2014

and

M.P.No.1 of 2014

1. K.Elumalai
S/o Kannapiran
2. N.Bindumadhavan
S/o S.Narashiman
3. V.Murugan
S/o R.Vaithiyalingam
4. V.Narayanan
S/o S.Veeraraghavan
5. L.Thavamari
D/o Noorthusamy
6. R.Arulmari,
S.o A.Raji
7. G.Krishnamoorthy,
S/o Ganapathy Pillai.
8. A.Amudha,
W/o Arunachalam



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9. A.Velumurugan,
S/o Annamalai

10. S.Jayalakshmi,
W/o sivapooshanam

11. K.Aurijothi,
W/o Kathan

12. P.Lalitha,
S/o Periyasamy

13.M.Vijaya,
W/o R.Muthusamy

14. A.Indara gandhi
D/o Arumguam

15. N.Poovaalagi,
B.T.Assistant,
Panchayat Union Middle School,
Kuladeepamangalam, Tirukoilur Taluk,
Villupuram District.

.... Petitioners

VS

1. The Director of Primary School Education,
Chennai.

2. Assistant Primary Educational Officer,
Mugaiyoor (E),
Manampoondi,
Tirukoilur Taluk,
Villupuram District.

.... Respondents



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Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Proceedings Na.Ka.No.920/A1/2013 dated 11.09.2013 passed by the 2nd respondent herein and quash the same and further direct the respondents to pay the Selection Grade Primary School Head Masters & B.T. Assistants Scale of pay to the petitioners.

For Petitioners : Mr.K.M.Ramesh,
Senior counsel for
Ms.S.Aparna

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent dated 11.09.2013, recovering the amount granted for the selection grade pay in the post of Primary School Headmaster and to direct the respondents to pay the Selection Grade Primary School Head Masters & B.T. Assistants Scale of pay to the petitioners.

2. The brief facts of the case of the petitioners are as follows:



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The petitioners are working as Primary School Head Masters and B.T.Assistants in the respondents Villupuram District Moogaiyur Union Primary and Middle schools. Initially, they were all appointed as Secondary Grade Teachers and subsequently promoted as Primary School Headmasters and B.T. Assistants. All of them have served for more than 20 years. The petitioners were awarded selection grade Secondary Grade Teachers pay on completion of 10 years of service. The next avenue of promotion was Special Grade Secondary Grade Teachers. While working as Selection Grade Secondary Grade Teachers and expecting special grade Secondary Grade Teachers scale of pay, the respondents passed an order promoting the petitioners as Primary School Headmasters and B.T.Assistants. The said promotion was given due to want of vacancy. The second respondent, after considering the long length of service of the petitioner and also as they are at the verge of getting Special Grade Secondary Grade Teachers scale of pay, promoted them as Primary school Headmasters and B.T.Assistants. After completion of 20 years of service, the petitioners were awarded Selection grade Primary School Headmasters scale of pay. Due to some urgency and want of vacancy, the petitioners were given promotion. The



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petitioners had not given any consent or willingness for the promotional post. On completion of 20 years of service, they were given Selection Grade pay in the post of Primary School Headmaster. Now, the 2nd respondent passed the recovery order based on the audit objection. Against the impugned order, the petitioners made representation to the first respondent to revoke the recover order and to award special grade secondary grade teachers scale of pay on completion of 20 years and to promote them as Primary School Headmasters and B.T.Assistant. As there was no reply from the 1st respondent, the present writ petition has been filed.

3. Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondents.

4. Learned counsel for the petitioner would submit that the 2nd respondent passed the impugned order without giving an opportunity to the petitioner. The order of recovery is against law and it would lead to disparity of scale of pay and juniors will get higher pay than seniors. The 2nd respondent has given promotion to the petitioners and considering that they



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have completed 20 years of service, selection grade Primary School Headmaster scale of pay was paid, otherwise, the 2nd respondent has to pay special grade secondary grade teacher scale of pay and after that he has to pay primary school Head Master scale of pay. The scale of pay of selection grade Secondary Grade Teacher and Primary School Headmaster post is more or less the same. The second respondent failed to consider that the appeal is pending before the 1st respondent. Without waiting for the first respondent's decision, the 2nd respondent has passed the order of recovery. Hence, the impugned order is liable to be set aside.

5. Per contra, the learned Special Government Pleader would submit that the petitioners were granted selection grade secondary grade teachers pay after completion of 10 years of service and subsequently, they were promoted to the post of Primary School Headmasters and the Selection Grade Primary School Headmaster pay was wrongly given to them. However, they are not entitled for the Selection Grade Primary School Headmaster pay as per the new scale of pay. Hence, the 2nd respondent has passed the order for recovery based on the audit objection.



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6. This Court considered the submissions made on either side and perused the materials available on record.

7. The petitioners are working as Primary School Headmasters and B.T.Assistants in the respondents Villupuram District Moogaiyur Union Primary and Middle Schools. Initially, they were all appointed as Secondary Grade Teachers and all of them have served for more than 20 years. They were awarded selection grade Secondary Grade Teachers pay on completion of 10 years of service. While working as Selection Grade Secondary Grade Teachers and were expecting for Special Grade Teachers scale of pay, they were promoted as Primary School Head Masters and B.T.Assistants. On completion of 20 years of service, as the petitioners were promoted to the post of Primary School Headmasters & B.T.Assistants, the respondents awarded Selection Grade pay in the post of Primary School Headmasters. Subsequently, without giving any notice to the petitioners, the 2nd respondent has passed the order of recovery. Therefore, the petitioners had given representation to the 1st respondent, not to recover the amount as it



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would lead to disparity of scale of pay as their juniors will get higher pay than them.

8. Further, it is the contention of the petitioners that the petitioners never asked for promotion and when they were expecting for special grade pay in the post of Secondary Grade Teachers, they were promoted as Primary School Headmasters and B.T.Assistants. If they were not promoted, the respondents would have granted Special Grade pay for the post of Secondary Grade Teachers. Considering that the petitioners have completed 20 years of service, they were given Selection grade Primary School Headmasters scale of pay. Moreover, if they were not granted the selection grade pay for the post of Primary school Headmasters, they would be getting lesser pay than their juniors. Further, it is also admitted that the selection grade pay for Primary School Headmaster was granted by the respondents and the petitioners were not in any way responsible for the fixation of wrong pay as they have not done any wrong representation. Recovery of excess payment made to the petitioners for no fault on the part of the petitioners appears to be unjustified. Even by mistake, wrong fixation of pay has been made by the officials of the respondents, the



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petitioners should not be penalised.

9. Further, if at all the 2nd respondent decided to recover the amount from the salary of the petitioners, the 2nd respondent ought to have issued notice to the petitioners and should have given an opportunity of hearing to them. Without doing so, passing an order of recovery is untenable in law.

10. For the all reasons stated above, the impugned order of recovery dated 11.09.2013 is set aside. The respondents are directed to fix the scale of pay to the petitioners as per the relevant rules. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/Non-speaking order
vsi

To

1. The Director of Primary School Education,
Chennai.

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2. Assistant Primary Educational Officer,
Mugaiyoor (E), Manampoondi,
Tirukoilur Taluk, Villupuram District.



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J.NISHA BANU,J.

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