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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.26303 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

B.Venkatappan .... Petitioner

Vs

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009.

2. The Assistant Elementary Education Officer,
Krishnagiri, Krishnagiri District.

3.The Accountant General (A & E),
Tamil Nadu, Teynampet,
Chennai – 600 018.

4. The District Additional Treasury Officer,
Krishnagiri, Krishnagiri District. .... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records pertaining to the orders in proceedings Se.Mu.Na.Ka.4873/2014/A2 dated 13.08.2014 passed by the fourth respondent herein and quash the same as illegal, arbitrary, unreasonable, being violative of rules and

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principles of natural justice thereby direct the respondents not to recover any amount from the petitioner's pension.

For Petitioner	:	Mr.V.Thirupathi
For R1, R2 & R4	:	Dr.T.Seenivasan Special Government Pleader
For R3	:	Mr.V.Murali

ORDER

This Writ Petition has been filed challenging the order of recovery of excess Dearness Allowance paid to the petitioner.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner is a retired Headmaster. He retired from service long back, i.e. in the year 2004 itself. As per G.O.Ms.No.238 (Education) Department, dated 26.06.1998, thereby the benefits can be extended to those who are promoted as Tamil Pandit/B.T.Teacher during the Fifth Pay Commission period i.e., 01.06.1988 till 31.12.1995 even though the selection grade scale of pay in the lower post is not identical to the ordinary grade scale of pay of the promotional post as a special case. Reference to the above, the Government passed an order in

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G.O.Ms.No.212, School Education (S2) Department, dated 07.08.2000 extending the benefits to all the elementary education services. By another G.O.Ms.No.38 School Education Department, dated 05.03.2001 and accordingly, the second respondent sanctioned the benefits at the time of retirement of the petitioner. Thereafter, the Government issued another G.O.Ms.No.235, dated 01.06.2009, accordingly, the Government revised the pension and pensionary benefits. The fourth respondent, after calculating the revised pension and pensionary benefits, had sanctioned the benefits in the said Government Orders. While being so, the fourth respondent passed order of recovery from the petitioner's pension. The petitioner had taken a specific stand that without any notice and without any opportunity to the petitioner, the order of recovery has been passed and as such, this is clear violation of process of natural justice.

4. A perusal of the counter filed by the fourth respondent reveals that as per G.O.Ms.No.235, Finance (Pension) Department, dated 01.06.2009, the pension was revised to all the pensioners with effect from 01.01.2006 with financial benefits from 01.01.2007. Accordingly, his existing pension on 01.01.2006 at Rs.4050/- per month was revised to Rs.9153/- per month and the arrears of pension was paid to the petitioner.

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The pension was revised by the fourth respondent is at Rs.5100/- per month from 01.02.2004. Thereafter, it was revised at Rs.9153/- per month from 01.01.2006. Accordingly, the petitioner is entitled to receive the arrears in the revised pattern only. The difference paid to the petitioner and pre-revised pattern becomes excess. Therefore, the Audit Officer had recommended the amount of Rs.67437/- to be recovered from the petitioner. Thereafter, it was categorically explained to the petitioner about the details and the excess payment was made to the petitioner Thereafter, the order of recovery has been passed in easy instalments without giving any pain to the petitioner.

5. Further, as per Rules, whenever a recovery is effected from a pensioner, his basic pension was not count for the recovery. The recovery was determined based upon the Dearness Allowance payable on pension and it does not exceeds 1/3rd amount of the Dearness Allowance. Accordingly, the recovery was Rs.3000/-, which is below 1/3rd of the Dearness Allowances per month. Therefore, the petitioner was not put into any financial distress and there is no violation of principles of natural justice.

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6. In view of the above, this Court finds no infirmity or illegality in the proceedings dated 13.08.2014 in Se.Mu.Na.Ka.4873/2014/A2 passed by the fourth respondent. Accordingly, this Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.09.2023

Index:Yes/No
Internet:Yes/No
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To
1. The Secretary to Government,
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2. The Assistant Elementary Education Officer,
Krishnagiri, Krishnagiri District.

3.The Accountant General (A & E),
Tamil Nadu, Teynampet,
Chennai – 600 018.

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