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W.P.Nos.23619 & 23620 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.23619 & 23620 of 2023

R.Saravanan

.. Petitioner in W.P.No.23619 of 2023

R.Vasanthi

.. Petitioner in W.P.No.23620 of 2023

Versus

1.The Director of Elementary Education
DPI Campus, College Road
Chennai – 600 006

2.The District Educational Officer (Elementary)
Thiruvannamalai Education District
Thiruvannamalai

3.The Block Educational Officer
Thurinjapuram Union 606 805
Thiruvannamalai District

... Respondents in both cases

Common Prayer: Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd and 3rd respondents to sanction selection grade pay to the petitioners in the post of Middle School Headmaster with effect from 14.08.2018 and 23.12.2021 respectively, without insisting repayment of incentive increment granted to the petitioners for B.Ed. Degree qualification, with all consequential and other attendant benefits including the arrears of salary along with interest for delay in payment.

In both petitions



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For Petitioners : Mr.G.Sankaran
for Mr.S.Nedunchezhiyan

For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed seeking to direct the respondents 2 and 3 to sanction selection grade pay to the petitioners in the post of Middle School Headmaster with effect from 14.08.2018 and 23.12.2021 respectively, without insisting repayment of incentive increment granted to the petitioners for B.Ed. Degree qualification, with all consequential and other attendant benefits including the arrears of salary along with interest for delay in payment.

2. It is the grievance of the writ petitioners that from 2018 & 2021 respectively, they are entitled to selection grade. However, the selection grade has not been granted to them. It is their further contention that there was a proceedings of the second respondent dated 31.05.2018, for recovery of a sum of Rs.58,080/- & Rs.83,220/- respectively for the excess payment said to have been made to the petitioners in respect of incentive increment



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from year 2010-2017. Though the said proceedings have been passed, the orders have not been implemented so far and further, the selection grade has not been granted to the petitioners.

3. Mr.V.Jeevagiridharan, learned Government Advocate takes notice for the respondents in both the cases. With the consent of both the parties, these writ petitions are disposed of.

4. Considering the limited relief sought for in these writ petitions, the respondents shall consider and pass order granting selection grade to the petitioners on its own merits. The proceedings dated 31.05.2018 will not come in the way of granting selection grade on its own merits. Since, the very order dated 31.05.2018 is only for recovery of money said to have been paid to the petitioners from 2010 to 2017. This Court is of the view that when the money has been paid, even assuming mistakenly and continuously paid for more than 5 years, the same cannot be recovered as per the dictum laid down by the Hon'ble Apex Court in the case ***State Of Punjab & Ors vs Rafiq Masih (White Washer) [(2015) 4 SCC 334]*** wherein it is held as



follows:

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“18. It is not possible to postulate all situations 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from 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



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extent, as would far outweigh the equitable balance of the employer's right to recover.

5. Such view of the matter, the proceedings dated 31.05.2018 will not come in the way of extending the benefits of Selection Grade and the same has to be decided on merits.

6. Accordingly, the respondents are directed to consider the representation of the petitioners dated 15.05.2019 for granting selection grade and pass orders on its own merits and in accordance with law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this Order.

7. In view of the above, these writ petitions stand disposed of. No costs.

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No



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N.SATHISH KUMAR, J.

dhk

To

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