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W.P.No.13161 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No. 13161 of 2017
and W.M.P.No.4676 of 2018
and 14153 of 2017

S.Amudha

... Petitioner

Vs.

1.The Director of Elementary Education,
Chennai – 600 006.

2.The District Elementary Educational Officer,
Coimbatore,
Coimbatore District.

3.The Assistant Elementary Educational Officer,
Karamadai,
Coimbatore District.

4.The Additional Assistant Elementary Educational Officer,
Karamadai,
Coimbatore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a WRIT of CERTIORARIFIED MANDAMUS, calling for
the records pertaining to the order passed by the 3rd Respondent in his



W.P.No.13161 of 2017

Proceedings in Na.Ka. No.1198/A1/2016 dated 02-05-2017 and to direct the respondents to confer all the consequential benefits to the petitioner and quash the same.

For Petitioner : Mr.B.Balavijayan

For Respondents : Mr.K.H. Ravikumar
Government Advocate

ORDER

This Writ Petition has been filed to quash the order of the 3rd respondent dated 02-05-2017 and to direct the respondents to confer all the consequential benefits to the petitioner.

2.The petitioner joined as Secondary Grade Assistant on 04.07.1988. The next avenue of promotion is to the post of the Headmaster of the Middle School for which she fully qualified. Thereafter, the panel for promotion to the post of Headmaster of the Middle School was drawn and published for the panel year 2006 on 06.06.2006 in which the petitioner has been shown as No.2. The petitioner was included in the panel because as per the orders issued by the Government, the post of Headmaster of the Middle School



W.P.No.13161 of 2017

could be filled up by way of promotion first from the Headmaster of the Elementary School cadre, and in the absence of any person in that cadre, the B.T. qualified Secondary Grade Teacher may be promoted. On that basis of the order of the Government alone, the panel was drawn for promotion to the post of Headmaster of the Middle School as on 01.01.2006 and all the persons who were included in the panel are only the Secondary Grade Teachers in the B.T. cadre of the Headmaster of the Elementary School. However, one K.M.Thamaraiselvi filed W.P.No.19682 of 2006 before this Court, and this Court granted interim stay on 13.12.2006. Thereafter, the petitioner made a representation requesting to give promotion to the petitioner as Headmistress of the Middle School as per the panel 2006. The petitioner also participated in the counselling but she has not given promotion. Thereafter, the petitioner has been promoted as the Headmaster of the Middle School on 02.06.2008, however, they fixed the scale of pay without calling any option from the petitioner. On seeing the same, since the petitioner was nearing Special Grade in the lower post, she requested to recover the amount which was fixed on the basis of the new scale of pay.



W.P.No.13161 of 2017

After the Pay Commission, the person who is nearing to complete the Selection Grade/Special Grade will be asked to exercise their option as to whether the pay fixation may be made in the old scale of pay or in the new scale of pay. The petitioner was nearing the Special Grade on 21.01.2008 and the petitioner exercised her option to fix the scale of pay in the lower post to enable her to get special grade in the lower post which will be advantageous to her, while fixing the scale of pay in the promoted post.

3.The learned counsel for the petitioner would submit that based on the promotion, the respondents have fixed the scale of pay in the revised post. Hence, she requested to fix the scale of pay in the lower post and after reaching Special Grade in the lower posts, the pay could be revised in the cadre of Headmaster of Middle School. Accordingly, the respondents accepted her option and fixed the scale of pay in the lower post in the Special Grade and thereafter, they fixed the scale of pay applying new Pay Band to the promotion post of Headmaster of Middle School, i.e., Rs.15600-39100 Plus Grade Pay Rs. 5700/- with effect from 02.06.2008. The



W.P.No.13161 of 2017

petitioner has been getting the pay. Thereafter, the 3rd respondent passed the impugned order dated 02.05.2017 for re-fixing the pay from PB 15600 – 39100 to 9300 – 34800 Grade Pay Rs.4,500 and ordered for recovery. Hence, this Writ Petition.

4.The learned Government Advocate for the respondents would submit that based on the G.O.Ms.No.212, dated 07.08.2000, the impugned order has been passed. The petitioner worked from 22.01.2008 to 01.06.2009 in the Special Grade post. Therefore, the petitioner is not entitled to the revised pay scale. Further, the respondents are continuing to pay the salary of the Headmaster of the Middle School to the petitioner. Now, the respondent is seeking for recovery of the amount which has been wrongly paid to the petitioner. The respondents paid the salary for the work done. After reversing to the post of Special Grade, the re-fixation of the salary has not been done.

5.On a perusal of the documents, it is seen that as per the G.O.Ms.No.212, dated 07.08.2000, the pay has been fixed in accordance



W.P.No.13161 of 2017

with the order issued by the Government and the revised scale of pay as per the rules. Further, the said G.O. has not been cancelled. They have fixed the scale of pay on the basis of the option exercised. Based on the promotion, the respondents have fixed the scale of pay in the revised post. Hence, she requested to fix the scale of pay in the lower post and after reaching Special Grade in the lower posts, the pay could be revised in the cadre of Headmaster of Middle School. Further, the respondents accepted her option and fixed the scale of pay in the lower post in the Special Grade and thereafter, they fixed the scale of pay applying new Pay Band to the promotion post of Headmaster of Middle School with effect from 02.06.2008. Now, the petitioner is getting the Special Grade scale of pay. The respondents had fixed the scale of pay on the basis of the option exercised. The amount has been paid long back and therefore, the excess amount cannot be recovered from the petitioner.

Accordingly, this Writ Petition is dismissed. Consequently,



W.P.No.13161 of 2017

connected Miscellaneous Petitions are closed. No costs.

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23.11.2023

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

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V.BHAVANI SUBBAROYAN, J.



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W.P.No.13161 of 2017

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