



W.A.(MD)No.511 of 2022

WEB COPIED BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.07.2022

PROUNOUNCED ON : .2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

G.Arokia Rajasekar W.A(MD)No.511 of 2022 ... Appellant
Vs.

1.The Director of School Education,
17, College Road,
Thousand Lights West,
Thousand Lights,
Subba Road Avenue,
Nungambakkam,
Chennai – 600 008.

2.The Joint Director of School Education,
DPI Complex, College Road,
Chennai – 600 006.

3.The Block Educational Officer,
Musiri Block,
Musiri Post and Taluk-621 211,
Tiruchirapalli District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.10808 of 2020, dated 24.03.2022.



WEB COPY



W.A.(MD)No.511 of 2022

For Appellant :Mr.S.Visvalingam

For Respondents :Mr.S.Shaji Bino

Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.10808 of 2020, dated 24.03.2022.

2. The prayer in the writ petition W.P.(MD)No.10808 of 2020 is for Writ of Certiorarified Mandamus, to quash the order, dated 25.08.2020 of the 3rd respondent and to direct the respondents to confirm the Selection Grade already granted in the proceedings, dated 14.11.2017 and Special Grade in the proceedings, dated 18.06.2020, of the District Educational Officer, Musiri.

3. The facts as stated in the affidavit filed along with the writ petition are that the petitioner was initially appointed by the



W.A.(MD)No.511 of 2022

WEB CORNU

Correspondent of St. Joseph High School, Verkottu, Ramanathapuram Taluk as Secondary Grade Teacher on 19.08.1999. Then, the petitioner was transferred to LFRC Primary School, Karaikudi Taluk, Sivagangai District and joined duty on 12.06.2008 and continued till 16.07.2009. Then through Employment Exchange, the petitioner was appointed as Secondary Grade Teacher in the Panchayat Union Primary School, Thirupampuram, Thiruvarur District and joined duty on 17.07.2009. Though the petitioner was serving as Secondary Grade Teacher, the petitioner has passed B.A., Degree in the year 2001, M.A., Degree in the year 2003 and B.Ed., Degree in the year 2013. The petitioner was sanctioned incentive increments for acquisition of M.A., and B.Ed., Degree.

4. The petitioner was granted Selection Grade in the post of Secondary Grade Teacher as per proceedings, dated 14.11.2017 of DEO and Special Grade in the post of Secondary Grade Teacher as per proceedings, dated 18.06.2020 DEO by counting the services right from the beginning i.e., 19.08.1999. However, the respondents



W.A.(MD)No.511 of 2022

WEB COPY

have revised the granting of Selection Grade and Special Grade vide the impugned order dated 25.08.2020 by counting the service period in the Government Primary School alone and refixation was ordered and the petitioner was directed to refund the excess payment made. The above said refixation and recovery order has been issued after issuance of show cause notice and the petitioner has submitted his reply to the same. The petitioner has approached the Joint Director of School Education, Chennai, under Right to Information Act wherein the Joint Director has replied that the services rendered in by the Secondary Grade Teacher in the Aided School can be counted along with the service rendered in by the Secondary Grade Teacher in the Government School, provided if the services are without any break.

5. The contention of the petitioner is that the petitioner was serving in the Aided School from 19.08.1999 to 16.07.2009 and in the Government School from 17.07.2009 to till date without any break. The petitioner also submitted that a similarly placed person namely, A.Mihavel, who is also serving as Secondary Grade Teacher



W.A.(MD)No.511 of 2022

in Marungapuri Panchayat Union School, Tiruchirapalli District, who also served previously in the Aided Private School, was granted Selection Grade and the same was not revised.

6. The further contention of the petitioner is that even assuming and presuming that the fixation of pay is wrong, it is not the mistake of the petitioner and it is the mistake of the administration for which the petitioner cannot be punished. The petitioner also submitted that the petitioner comes under the Group C (Class 4) and according to **White Washers case** recovery cannot be ordered, if any employee is coming under Group C and Group D categories.

7. The respondents have filed a counter affidavit in the writ petition stating that the petitioner completed the service of 10 years on 18.08.2009 including the services rendered in Aided Schools and becomes eligible for award of selection grade with effect from 19.08.2009, i.e., after 01.06.2009. As per instructions contained in various Government Orders and clarification issued, the petitioner's



W.A.(MD)No.511 of 2022

WEB COPY

pay in the selection grade should have fixed in the same scale of pay by giving 3% along with the pay drawn in the same scale of pay, i.e., 5200-20200 + GP 2800. Contrary to this, the petitioner was awarded the scale of pay of Rs. 9300-34800+GP 4800 which is wrong. The award of selection grade or the special grade was not disputed but the scale of pay given for selection grade alone was objected to. The excess pay due to the fixation of wrong scale of pay has been ordered to be recovered. Without understanding this fact, the petitioner has filed this writ petition. The petitioner is well aware that he is not eligible for the scale of pay of Rs. 9300-34800+GP4300 and without intimating the wrong pay fixation, the petitioner was enjoying the same which is illegal. Hence, the order dated 25.08.2020 passed for pay revision and recovery was challenged in writ petition.

8. The respondents further submitted that the revised pay structure is issued with effect from 01.06.2006, but no separate scales of pay have been provided for Selection Grade / Special Grade holders. The employees on award of Selection Grade /



W.A.(MD)No.511 of 2022

WEB

Special Grade in the revised scales of pay have been granted the benefit of one increment equal to 3% of basic pay including grade pay in the same Pay Band and Grade Pay. However, in the revised pay structure employees who were awarded Selection Grade / Special Grade prior to 01.01.2006 in the pre-revised scales of pay were granted due protection by allowing them to move to the corresponding revised pay scales by virtue of the higher pre-revised pay scales drawn by them. In the present case, the petitioner was granted selection grade on 19.08.2009, which is after the cut-off date, i.e., 01.01.2006. Therefore, the petitioner is eligible for 3% increase and not the revised pay band and grade pay. Further, in the case of employees awarded selection grade / special grade between 01.01.2006 to 31.05.2009, i.e., prior to the issue of G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009, they were permitted to exercise their option to come over to the revised scales of pay on the date of their award of Selection Grade / Special Grade by foregoing the arrears entitled to them. Or the employees can opt to remain in the existing scale of pay (pre-revised scale of pay) upto any period of their choice between 01.01.2006 to



W.A.(MD)No.511 of 2022

31.05.2009 (i.e.) prior to the date of issue of notification of Tamil Nadu revised Scales of Pay Rules, 2009. In the case of the petitioner, he moves to Selection grade on completion of 10 years only on 18.08.2009. Hence, he is not covered in the above orders and he should be fixed the benefit by giving 3% increase plus GP in the same pay band. However, he was given a higher scale of pay for selection grade on 18.08.2009, which is wrong and hence, the fixation made in the wrong scale of pay has been cancelled and the amount paid in excess has been ordered for recovery. There is no infirmity in the order, dated 25.08.2020. Therefore, the respondents prayed to dismiss the writ petition.

9. The learned Single Judge has held that there is no impediment to recover the excess salary granted to petitioner. Unjust enrichment of public money can never be accepted. In case, excess payment has been made to an employee on account of erroneous fixation, who is in service, then it has to be recovered by following the procedures contemplated under law. Exceptions are carved out only if extreme hardship is caused to an employee.



W.A.(MD)No.511 of 2022

WEB COURT

Courts have repeatedly held that recovery alone can be set aside only if there is an extreme hardship to the employee in the event of any such recovery. Certain exceptions are provided by the Courts in respect of the retired employees who had worked in Group III and Group IV employees. Otherwise, the Courts have to consider the facts of each case to grant of such exemptions. It is not as if in all the cases of re-fixation of pay on account of error, recovery is to be set aside. Only if the Court forms an opinion that recovery would cause hardship to the retired employee or the employee who comes under Class 3 and 4 then alone the recovery ought to be set aside. The learned Single Judge also held that the Honourable Supreme Court in ***Chandi Prasad Uniyal and others Vs. State of Uttarkhand*** and others reported in ***(2012) 8 SCC 417*** has emphasised the importance and relevance of the public money and the recovery of excess payment made to the employees can be recovered. In the present case, the writ petitioner is not disputing the error had occurred in the fixation of pay. Hence, the learned Single Judge held that the petitioner is not entitled to payment which is unjust enrichment of tax payers' money and dismissed the



W.A.(MD)No.511 of 2022

WEB writ petition.

10. Heard Mr.S.Visvalingam, the Learned Counsel appearing for the appellant and Mr.S.Shaji Bino, the Learned Special Government Pleader for respondents and perused the records.

11. When the writ appeal was taken up for hearing on 06.07.2022, the learned Counsel appearing for the appellant submitted that the appellant would fall under the class 3 / class C and therefore, as per the judgment rendered by the Hon'ble Supreme Court in the State of Punjab and others Vs. Rafiq Mashi (whiter washer) and other reported in (2015) 4 SCC 334, the appellant is entitled to exemption from recovery. In order to clarify whether the petitioner comes under the class C, the respondents were directed to file an additional affidavit clarifying the same. The respondents filed an additional affidavit stating that the writ petitioner would fall under Group C (class C) and the relevant portion is extracted here under:



W.A.(MD)No.511 of 2022

WEB COPY

“3. I respectfully submit that as per the G.O.Ms.No. 303, Finance (Pay Cell) Department, dated 11.10.2017, the 6th pay commission was implemented with effect from 01.07.2016 under which the schedule III pay matrix for the employee under pay band i.e. Rs.9,300-34800 it reveals the level of the petitioner is placed under a level 12 according to the pay scale and grade pay i.e. Rs.4300/- and the cell position is 17 and accordingly received pay scale of Rs. 57200/-

4. I respectfully submit that the proceedings of the Block Educational Officer, Musiri in Mu.Mu.No.382/A3/2020 dated 22.06.2020 reveals that the petitioner level is 12 and the self position is 17 accordingly receiving Rs.57200/- pay scale as on 26.08.2019.

5. I respectfully submit that the in such circumstances I respectfully submit before this Hon'ble Court that the petitioner is comes under the group C, as per the G.O.Ms.No. 303, Finance (Pay Cell) Department, dated 11.10.2017, and accordingly filing this affidavit before this Hon'ble Court as directed by this Hon'ble Court.”

12. The appellant submitted that the respondents failed to take the service rendered in aided School and hence, sought to



W.A.(MD)No.511 of 2022

WEB CORRE revise the fixation of pay. However, the said contention is incorrect, the respondents have granted the selection grade by taking into account the service rendered in aided school as well. However, the mistake has occurred because in the year 2009 in the sixth pay commission revision was issued. Wherein, the new pay structure was introduced in G.O.Ms.No.234 dated 01.06.2009. While fixing the pay band, the appellant is entitled to the pay band of Rs.5200–20200 + GP 2800. However, it was erroneously fixed the pay band in Rs.9300–34800 + GP 4800.

13. Further it is seen while implementing the pay revision under G.O.Ms.No.234, several issues were raised and one such issue is that the G.O. was issued on 01.06.2009 but was given effect from 01.01.2006, whether the persons retired in-between period is entitled to revision of pay or revision of pension. Also, whether the selection grade granted during this period is entitled to 3% increment or selection grade scale of pay and other several issues. Hence the Government deemed it fit to constitute “one man commission” to resolve the issues. Thereafter the government



W.A.(MD)No.511 of 2022

WEB COURT

issued G.O.Ms.No.23, G.O.Ms.No.235 and then issued clarification letters. Therefore, it is not a deliberate mistake of the respondents, but while implementing 6th pay commission revision the mistake has occurred and it has occurred to several persons. The respondents have shifted from one method of pay to another method of pay and during such shifting certain errors are bound to happen. It is seen that the petitioner was appointed in the private aided school on 19.08.1999 and is entitled to selection grade from 19.08.2009. The G.O.Ms.No.234 clearly states that if the employee has received selection grade prior to 01.06.2009 then he is entitled to selection grade fixation. In the present case the petitioner has received selection grade from 19.08.2009 onwards, admittedly it is after 01.06.2009 i.e. two months after the cut-off date, then the petitioner is entitled to 3% revision, but unfortunately the selection grade fitment slab was fixed erroneously. Therefore, this Court is of the considered opinion that the refixation ordered by the respondents is absolutely right and this Court is not inclined to interfere with the refixation.



W.A.(MD)No.511 of 2022

WEB COPY

14. However, as far as the recovery is concerned, since the amount is huge this Court cannot blindly set aside the recovery order. It is seen the appellant had taken a plea that his past service in aided school was not taken into account while granting selection grade and the said plea is misleading and false. The private aided school service of the appellant from 19.08.1999 was taken into account for calculating 10 years to grant selection grade. The appellant is well aware that he is not entitled to be fixed under Rs. 9300 scale of pay and he is entitled to only Rs.5200 scale of pay. The appellant having enjoyed from 2006 to 2009 is also at fault. Hence, the affidavit filed by the appellant is absolutely false and the authority who has fixed the wrong fixation is also at fault.

15. Therefore, this Court is of the considered opinion that 50% of the amount shall be recovered from the appellant and remaining 50% shall be recovered from the erring officials.



W.A.(MD)No.511 of 2022

WEB COPY 16. With the above said observation, the writ appeal is disposed of. No costs.

[S.S.S.R., J.]

[S.S.Y., J.]

.2023

Index: Yes / No

Tmg

To

1. The Director of School Education,
17, College Road,
Thousand Lights West,
Thousand Lights,
Subba Road Avenue,
Nungambakkam,
Chennai – 600 008.
2. The Joint Director of School Education,
DPI Complex, College Road,
Chennai – 600 006.
3. The Block Educational Officer,
Musiri Block,
Musiri Post and Taluk-621 211,
Tiruchirapalli District.



WEB COPY



W.A.(MD)No.511 of 2022

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)No.511 of 2022

.2023