



W.P.(MD)No.6219 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.6219 of 2018

K.Murugan

... Petitioner

Vs.

1.The Joint Director (Aided Schools)
Directorate of Elementary Education,
Chennai-600 006.

2.The District Elementary Educational Officer,
Dindigul.

3.The Assistant Elementary Educational Officer,
Dindigul Urban,
Dindigul.

4.The Correspondent,
Ka.Su.Valluvan (Aided) Middle School,
Dindigul.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by the third respondent in his proceedings in Na.Ka.No.79/2016 dated 25.04.2016 and the proceedings



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of the third respondent in his Na.Ka.No.79/A1/2016 dated 08.12.2016, quash the same and thereby directing the third and fourth respondents to release the withheld of the balance amount of the petitioner's pension benefits forthwith with interest.

For Petitioner : Mr.G.Gomathi Sankar
For Respondents : Mr.J.Ashok
Additional Government Pleader
for R1 to R3

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order passed vide proceedings in Na.Ka.No.79/2016 dated 25.04.2016 and the consequential order passed vide proceedings in Na.Ka.No.79/A1/2016 dated 08.12.2016, by the third respondent, quash the same as illegal and direct the third and fourth respondents to release the withheld of the balance amount of the petitioner's pension benefits forthwith with interest.

2. The case of the petitioner is that the petitioner has completed Diploma in Teacher Education in the year 1977 and he was appointed as Secondary Grade Teacher on 25.10.1979 in Hindu Manimegalai Primary



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School and he had been working there for more than 22 years. Thereafter, he was transferred to the fourth respondent School, where he was working for 14 years without any remarks. While so, the petitioner has got permission from the third respondent to study B.Ed Degree and he joined in B.Ed regular course. In the year 2008, the petitioner has completed the B.Ed degree and he had been receiving the increment and promotion in the year 2009 itself. His entire Degree Certificates have been verified and thereafter, he was given promotion and increment. After completing 14 years of service in the fourth respondent School, he retired from service on 31.05.2016. The petitioner is receiving monthly pension only but it is not full pension. The third respondent did not enforce the Seventh Pay Commission to the petitioner. In fact, the third respondent has issued a show cause notice on 30.03.2016 stating that the petitioner has not got the B.Ed Degree from the Recognized College according to the Education Rules, for which, the petitioner has also given explanation on 11.04.2016. But, the third respondent has not satisfied with the explanation given by the petitioner and passed the impugned order on 25.04.2016 directing the fourth respondent to revise the scale of



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pay on the Service Register. Subsequently, the third respondent has passed the consequential impugned order dated 08.12.2016 to withheld the pension benefits of the petitioner and cancelled the three increments and the monthly salary of May 2016. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner has retired from service on 31.05.2016 and at the time of verge of his retirement, the third respondent has issued the show cause notice on the ground that the petitioner has not acquired the B.Ed Degree from the Recognized College and thereby, has passed the impugned order on 25.04.2016, directing the fourth respondent to revise the scale of pay of the petitioner and passed the consequential impugned order on 08.12.2016 to withheld his pension benefits and cancelled the three increments and the monthly salary of May 2016. The present impugned orders passed by the third respondent are without providing any opportunity to the petitioner. Admittedly, the petitioner has availed unearned leave for 162 days from the third respondent and the same was



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also approved by them. The petitioner has studied B.Ed course in the Meenakshi Educational College, Dindigul affiliated to the Madurai Kamaraj University from 03.01.2008 to 13.06.2008. Further, for having acquired higher qualification, he was also granted increment which cannot be cancelled and there is no necessity for getting approval from the respondents to pursue the higher studies and the same was also decided by this Court in a catena of judgments. Hence, he prays for passing appropriate orders.

4. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the petitioner had joined the B.Ed., Course without prior permission of the Department. As per the Tamil Nadu Leave Rules, an employee is entitled to avail the unearned leave on private affairs for 90 days only. However, the petitioner has availed the unearned leave for more than 90 days (i.e.,) from 03.01.2008 to 12.06.2008. He had obtained permission from the Department, only after joining in the Degree Course and he was granted promotion only based on B.Lit., Degree and not on B.Ed., Degree. After



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following the procedures contemplated under the Act, the impugned orders have been passed by the third respondent and the petitioner was given ample opportunity to explain his position. Therefore, there is no illegality or irregularity on the part of the third respondent.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Secondary Grade Teacher in the year 1979 in Hindu Manimegalai Primary School, Old Kappliyapatti, Dindigul and he was transferred to the fourth respondent School on 13.09.2002. In the year 2009, he was given promotion as B.T.Assistant. During the time of his retirement, the third respondent has issued a show cause notice on the ground that the petitioner has joined the B.Ed., course without obtaining any prior permission and the College studied by the petitioner is not a recognized one, for which, the petitioner has also given explanation.



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Thereafter, the present impugned orders have been passed on the ground that the petitioner has studied the B.Ed., Degree as against the Rules and the petitioner has availed unearned leave on private affairs for more than 90 days continuously (i.e.,) from 03.01.2008 to 12.06.2008. However, the fact remains that the petitioner has joined the B.Ed., Course after obtaining prior permission from the Department and has obtained the B.Ed., Degree in the year 2008 itself and he was granted increment and promotion in the year 2009. However, after a lapse of seven years, the third respondent has taken action against the petitioner and passed the impugned order dated 25.04.2016 and the consequential impugned proceedings dated 08.12.2016, which is not sustainable one. Hence, the impugned order passed in Na.Ka.No.79/2016 dated 25.04.2016 and the consequential impugned proceedings passed in Na.Ka.No.79/A1/2016 dated 08.12.2016 by the third respondent are quashed and the respondents are directed to settle the entire benefits to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order.



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7. Accordingly, this Writ Petition is allowed. No costs.

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ssb

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To:

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Directorate of Elementary Education,
Chennai-600 006.
- 2.The District Elementary Educational Officer,
Dindigul.
- 3.The Assistant Elementary Educational Officer,
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M.DHANDAPANI,J.

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