



W.P(MD)No.16166 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.16166 of 2016

and

W.M.P(MD)Nos.11823 and 11824 of 2016

and

W.M.P(MD)Nos.15230 and 17606 of 2016

A.Annammal

...Petitioner

Vs.

1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai – 9.

2.The Joint Director,
Higher Secondary Education Department,
Chennai – 600 006.

3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Headmaster,
Government Higher Secondary School,
Burkit Managaram,
Tirunelveli District.

....Respondents



W.P(MD)No.16166 of 2016

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order of the second respondent in Na.Ka.040015/W3/C1/2016 dated 04.08.2016 and consequential impugned order passed by the fourth respondent in Na.Ka.No.52/2016 dated 19.08.2016 and quash the same as illegal and direct the respondents to continue to pay the monthly salary fixed for the petitioner at the time of appointment as P.G.Assistant(Tamil) by protecting the past service rendered.

For Petitioner : Mr.R.R.Kannan
For Respondents : Mr.A.Kannan,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2. This writ petition has been filed against the order of the second respondent, dated 04.08.2016 and the consequential order of the fourth respondent, dated 19.08.2016 wherein it is directed to remit the excess amount paid to the petitioner by wrong fixation of pay in the post of Post Graduate Teacher.



W.P(MD)No.16166 of 2016

3. A counter affidavit has been filed on behalf of the respondents.

4. The main grievance raised by the petitioner in this writ petition is that without issuing any notice to the petitioner or without providing any opportunity to the petitioner, the respondents 2 and 4 unilaterally passed the impugned orders directing to remit the excess amount.

5. The learned counsel for the petitioner submits that before passing the impugned orders, the respondents 2 and 4 failed to follow the procedure contemplated under law for recovery of any excess amount paid erroneously.

6. The learned Additional Government Pleader appearing for respondents 2 and 4, would submit that at the time of fixation of pay to the petitioner in the post of Post Graduate Assistant, the said pay was wrongly fixed and due to that, some excess payment was received by the petitioner and to recover the excess payment, the respondents initiated proceedings and passed the impugned orders by following the procedure and as such, the interference of this Court is not warranted in this case.



W.P(MD)No.16166 of 2016

7. Having regard to the submissions of the respective counsels and upon perusal of the materials available on record, there is no any dispute with regard to the admitted facts by both sides.

8. In the considered opinion of this Court, the only issue to be considered is whether any opportunity is provided to the petitioner before passing the impugned orders or not.

9. On a careful perusal of the orders impugned in the writ petition, it is clear that no notice is issued to the petitioner before passing the impugned orders or no opportunity is provided to the petitioner to put forth her version before the authorities, who passed the impugned orders.

10. It is settled law that any order passed without providing opportunity to the aggrieved persons to put forth their case, is against the principles of natural justice.

11. Admittedly, in the present case, the impugned orders are passed without giving any notice calling for the explanation of the petitioner or giving any opportunity to the petitioner to put forth her case personally. Due to this



W.P(MD)No.16166 of 2016

reason, in my considered opinion, the impugned orders are issued against the principles of natural justice and as such, these orders are unsustainable under law and liable to be set aside.

12. For the reasons stated above, this writ petition is allowed with the following directions:

(i)The orders impugned in this writ petition in Na.Ka.040015/W3/C1/2016, dated 04.08.2016, passed by the second respondent and consequential order passed by the fourth respondent in Na.Ka.No.52/2016, dated 19.08.2016, are hereby set aside.

(ii)The matter is remitted back to the second respondent to conduct a *de novo* enquiry and after providing reasonable opportunity to the petitioner and appropriate orders shall be passed in accordance with law.

13. No costs.



W.P(MD)No.16166 of 2016

WEB COPY

14. Consequently, connected miscellaneous petitions are closed.

01.09.2023

Index : Yes / No

NCC : Yes / No

PM

To,

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W.P(MD)No.16166 of 2016

BATTU DEVANAND, J.

PM

W.P.(MD)No.16166 of 2016

01.09.2023