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W.P.Nos.1202, 1212 & 1219 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos. 1202, 1212 & 1219 of 2022

and

W.M.P.Nos.1270, 1271, 1292, 1293, 1303 & 1309 of 2022

P.Kanmani Petitioner in
W.P.No.1202 of 2022

K.Thangam Petitioner in
W.P.No.1212 of 2022

S.Kaleeswaran Petitioner in
W.P.No.1219 of 2022

Vs

1. The Government of Tamil Nadu,
Rep. by Secretary to the Government,
School Education Department,
Fort St.George, Chennai – 600 009.

2. The Director of Elementary Education,
College Road, Chennai – 600 006.

3. The District Elementary Educational Officer,
Tirupur, Tirupur District.

4. The Block Educational Officer,
Avinashi Panchayat Union,
Avinashi, Tirupur District.

.... Respondents in all W.Ps



W.P.Nos.1202, 1212 & 1219 of 2022

Prayer in W.P.No.1202 of 2022:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the respondent of the respondents in relation to the proceedings issued in Na.Ka.No.1162/A1/A2/2018 dated 11.10.2021 issued by the fourth respondent and quash the same and issue a consequential direction to the respondents to restore the original pay fixation done in the statement of pay fixation in the proceedings No.Na.Ka.No.879/A1/2009 dated 30.07.2009 and in proceedings in Na.Ka.No.1051/A1/A2/2011 dated 19.05.2011 by Assistant Elementary Educational Officer, Avinashi Panchayat Union, Tirupur (District) now, redesigned as Block Educational Officer, Avinashi Panchayat Union, Tirupur District, with arrears.

Prayer in W.P.No.1212 of 2022:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the respondent of the respondents in relation to the proceedings issued in Na.Ka.No.1162/A1/A2/2018 dated 11.10.2021 issued by the fourth respondent and quash the same and issue a consequential direction to the respondents to restore the original pay fixation done in the statement of pay fixation in the proceedings No.Na.Ka.No.879/A1/2009 dated 30.07.2009 and in proceedings in Na.Ka.No.1625/A2/2013 dated 24.09.2013 by Assistant Elementary Educational Officer, Avinashi Panchayat Union, Tirupur (District) now, redesigned as Block Educational Officer, Avinashi Panchayat Union, Tirupur District, with arrears.



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Prayer in W.P.No.1219 of 2022:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the respondent of the respondents in relation to the proceedings issued in Na.Ka.No.1162/A1/A2/2018 dated 11.10.2021 issued by the fourth respondent and quash the same and issue a consequential direction to the respondents to restore the original pay fixation done in the statement of pay fixation in the entry in Service Register No.Na.Ka.No.1501/A2/2011 dated 19.05.2011 by Assistant Elementary Educational Officer, Avinashi Panchayat Union, Tirupur (District) now, redesigned as Block Educational Officer, Avinashi Panchayat Union, Tirupur District, with arrears.

In all W.Ps

For Petitioners : Mr.R.Saseetharan
For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the order dated 11.10.2021, thereby ordered to recover the excess payment paid to the petitioner from 25.07.2007 to 30.09.2021 and also to revise the pay fixation.

2. Heard the learned counsel appearing on either side and perused the materials available on record.



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3. The petitioners were initially appointed as Secondary Grade Teacher at Panchayat Union Primary School from the candidates sponsored by the District Employment Exchange. The Government of Tamil Nadu has framed a Scheme to award Selection Grade in the post on completion of 10 years and Special Grade in the post on completion of another 10 years in Selection Grade or on completion of twenty years of total service, as per the recommendations of 3rd Pay Commission of State of Tamil Nadu. The Government of Tamil Nadu, by G.O.Ms.No.234, Finance (Pay Cell), dated 01.06.2009, has introduced a revised scale of pay for the 7th time with notional effect from 01.01.2006 and monetary benefit from 01.01.2007. Accordingly, the Government of Tamil Nadu had introduced a Scheme of Pay Band + Grade Pay for the post, in the place of time scale of pay. However, it has not prescribed a separate scale of pay for selection grade in the particular post and also for special grade, instead it prescribed an increment, which is equal to 3% of basic pay.

4. After several demand from the employees of the State Government, the Government of Tamil Nadu re-introduced a separate



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scale for Selection and Special Grade scale of pay, on completion of 10/20 years of service with certain limitation in the Government Letter dated 08.11.2010. It is applicable only for the employees, who are on the selection grade scale of pay prior to 01.01.2006 in the pre-revised scale of pay. In respect of employees who moved to selection grade between 01.01.2006 and 31.05.2009, it is directed that they can exercise their option to come over to the revised scale of pay from the date of selection grade between that period.

5. As far as the petitioners are concerned, they were due to complete ten years of service on 06.08.2007 and entitled for selection grade on 06.08.2007. But before 06.08.2007, they were given promotion to the post of Primary School Headmaster on 25.07.2007, just ten days prior to the date of selection grade from the lower post. They were promoted, when the Government order in G.O.Ms.NO.234, Finance (Pay Cell) dated 01.06.2009 was not come into force and as such, the petitioners were exercised option to fix their pay from 25.07.2007. As per G.O.Ms.No.234, Finance (Pay Cell) dated 01.06.2009, it was introduced a revised scale of pay for its employees for 7th time,



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commencing from 01.01.2006. Therefore, the petitioners pay has to be refixed in the promoted post of Primary School Headmaster as on 25.07.2007 as per the Tamil Nadu Revised Pay Scale Rules, 2009, as introduced in G.O.Ms.No.234, dated 01.6.2009. Subsequent to the order in G.O.Ms.No.1071, dated 22.07.2013 and the Government Letters dated 26.06.2009 and 06.08.2009 says that exercise of option and re-option on fixation of pay in the promotion post, after a selection grade in the lower post. Accordingly, the petitioners had exercised option on 04.08.2009 to fix their pay in the promotional post of Primary School Headmaster in the Revised Pay Scale, 2009, after earning an increment on 25.07.2007 for selection grade. The said option was duly accepted and fixed their pay on 06.08.2007.

6. It is also relevant to rely upon the Judgment of the Hon'ble Division Bench of this Court in ***W.A.No.700 of 2020*** in the case of ***G.Rajagopal Vs. The Government of Tamil Nadu and others***, in which, this Court held as follows :

“18. Therefore, once such a promotion has been earned by any of the juniors to him, then from that



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date, he is eligible or entitled to. However, in the lower post, as he was working only in that lower post before his superannuation, since one increment has fallen due within a period of three months, he is entitled to seek for such an increment and thereafter he can seek for such a promotion. Therefore, the difference of promotion from the actual date to that of his junior earned such promotion are immediately after he earned one increment would not make any difference as every such fixation of promotion as well as the pay was only notional basis and no financial commitment to the Government or Department concerned.”

7. Thereafter, the Government of Tamil Nadu had increased the pay band of Primary School Headmaster from Rs.9,300-34,800+4,300 to Rs.9,300+34,800+4,500 with effect from 01.01.2011 by the G.O.Ms.No.23, dated 12.01.2011. Accordingly, the petitioners were allowed to draw the same. Thereafter, there was increment at the rate of 3% to 6% of basic pay for selection grade by G.O.Ms.No.237 dated 22.07.2013. While being so, the fourth respondent, by the proceedings dated 13.07.2020, stated that by the proceedings dated 26.05.2020, the fourth respondent found that pay fixation is wrong and therefore,



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decided to cancel the pay fixation of the petitioners. Though the petitioners submitted objections on 22.07.2020, it is stated that as per the Rules and Government orders, they are entitled to exercise option to get pay fixation in the promoted post at a later date after earning an increment, for selection grade, in the lower post that they are due to get an increment for selection grade. The same was not considered by its proceedings dated 21.10.2020 and rejected the objections raised by the petitioners and directed the petitioners to exercise re-option to fix a pay on the date of promotion, if not, the fourth respondent itself was fixed the pay on the date of promotion. Once again the petitioner submitted a representation by way of objections. However, without considering the same, the fourth respondent cancelled the pay fixation and ordered to recover the excess payment by its proceedings dated 11.10.2021.

8. A perusal of the counter filed by the third respondent reveals that the pay of the petitioners was fixed on 01.01.2006 as per the norms for fixation of pay as notified under G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009 and the mode of pay fixation in the promoted post is detailed in F.R.22B of Tamil Nadu Revised Pay Scale



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Rules. Accordingly, the Government servant may opt to get their pay fixed after getting normal increment in the lower scale of pay. It does not provide any increment which is given for the award of selection grade. Therefore, the pay of the petitioners was rightly revised and ordered for recovery.

9. As rightly pointed out by the learned counsel for the petitioner that as per the Rules and Government orders, the petitioners are entitled to exercise option to get pay fixation in the promoted post at a later date earning an increment, for selection grade, in the lower post, that they are due to get an increment for selection grade on 06.08.2007, while the petitioners were promoted on 25.07.2007, therefore, option is exercised to fix the pay on 06.08.2007 in the promoted post after taking into account the increment in the promoted post. That apart, the order of recovery was made after a period of five years.

10. The Hon'ble Supreme Court of India in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334*** held that recovery of any excess payment for the mistake of the



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department after overlooking period of five years cannot be made. In the present case, the respondents have sought to make recovery from 25.07.2007 to 30.09.2021. Therefore, it is impermissible under law to make recovery after a period of five years from the date of excess payment.

11. In view of the above, for all the foregoing observations, the impugned orders are liable to be quashed. Accordingly, the impugned order dated 11.10.2021 is hereby quashed and these writ petitions are allowed. The respondents are directed to restore the original pay fixation of the petitioners and disburse the arrears, if any, within a period of six weeks from the date of receipt of a copy of this order.

02.07.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To
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1. The Secretary to the Government,
School Education Department,
Fort St.George, Chennai – 600 009.
2. The Director of Elementary Education,
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G.K.ILANTHIRAIYAN, J.

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