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W.P.No.1845 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.1845 of 2020 and
W.M.P.No.2148 of 2020

V.Prabhakaran

... Petitioner

Vs.

1.The Director of Elementary Education,
DPI Complex, College Road,
Chennai 600 006.

2.The District Educational Officer,
Ulundurpet Education District,
Villupuram District.

3.The Assistant Elementary Educational Officer/
Presently called the Block Educational Officer,
Ulundurpet, Villupuram District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent bearing Na.Ka.No.144/A1/2018 dated 19.01.2018 and to quash the same and consequently directing the respondents to restore the selection grade granted in favour of the petitioner in the pay scale applicable to the post



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of Primary School Head Master with all other consequential and attendant benefits along with interest in delay in payment.

For Petitioner : Mr.J.Jayamalan

For Respondents : Mr.P.Gurunathan, AGP

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the third respondent bearing Na.Ka.No.144/A1/2018 dated 19.01.2018 and to quash the same and consequently direct the respondents to restore the selection grade granted in favour of the petitioner in the pay scale applicable to the post of Primary School Head Master with all other consequential and attendant benefits along with interest for the delay in payment.

2. Heard Mr.J.Jayamalan, learned counsel for the petitioner and Mr.P.Gurunathan, learned Additional Government Pleader for the respondents.



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3. The petitioner was initially appointed as Secondary Grade Teacher in the year 1990 and promoted as Elementary School Headmaster on 05.06.2000. As he qualified with B.Lit Degree, he is eligible for promotion to the post of Middle School Headmaster in the temporary vacancy which arose due to the suspension of the incumbent P.Allimuthu in view of the pending criminal charges against him. The petitioner had completed 10 years of service in the pay scale of Primary School Headmaster with effect from 05.06.2010. Hence he exercised his option to fix his scale in the post of Middle School Headmaster after getting an increment in the pay scale of Primary School Headmaster.

4. According to the option given by the petitioner, pay fixation was done in the post of Middle School Headmaster with effect from 01.07.2010 as per the proceedings of the third respondent dated 07.12.2010. However, the impugned proceedings has been issued without giving notice to the petitioner by the third respondent on 19.01.2018 for recovering the selection grade pay stating that the selection grade pay



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could not have been fixed when the petitioner had already been promoted to the post of Middle School Headmaster.

5. The petitioner joined in the post of Middle School Headmaster on 17.12.2009. However, he preferred to fix a pay in the higher post on 01.07.2010 by considering the fact that he would complete 10 years of service in the lower post as on 05.06.2010. No doubt the petitioner is entitled to pay fixation under Rule 22(b) in view of his option exercised under Rule 22(b). There is a difference between fixing pay under 22(b) and fixing the grade pay in the lower post after getting promotion to the higher post before completing the required services for the selection grade.

6. It is understandable that the petitioner is eligible to get one increment over and above the entry level scale of the higher post in view of the option given under Rule 22(b). That is exactly the reason why his pay has been fixed as on 01.07.2010 and the proceedings have been issued in this regard on 07.12.2010. But the petitioner is said to have got



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selection grade pay also and that is the reason for issuing the impugned recovery proceedings.

7. The respondent authority should not confuse between fixation of pay under Rule 22(b) and availing the selection grade benefit in the lower post even while the employee has been promoted to the next level before the completion of 10 years of service for the selection grade. Since the petitioner has been promoted to the post of Middle School Headmaster before the petitioner got the eligibility for selection grade, the petitioner cannot be allowed to enjoy the selection grade and the higher pay fixed under Rule 22(b).

8. Had the petitioner been issued with a notice before issuing the recovery order, he would have got the opportunity to make his submission as to his entitlement. But no such opportunity was given. Further the recovery proceedings have been issued on 19.01.2018 which is beyond five years from the date on which the alleged excess pay has been made to the petitioner. The above situation is squarely covered



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under one of the conditions contemplated by the Hon'ble Supreme Court in White Washer's case (*State of Punjab Vs. Rafiq Masih (White Washer) etc.* reported in (2015) 4 SCC 334) which is extracted hereunder:

“18. It is not possible to postulate all situation of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher



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post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) in any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

9. Hence, the alleged excess payment is not eligible for recovery. Therefore, there is no difficulty in quashing the impugned proceedings for recovery in view of its illegality as stated above. However, the third respondent can revise the pay fixation by taking into consideration of the option exercised by the petitioner under Rule 22(b) and also giving one opportunity to the petitioner to make his submission before re-fixing the pay at any lower scale.

10. In view of the above stated reasons, this Writ Petition is allowed and the impugned order issued by the third respondent bearing Na.Ka.No.144/A1/2018 dated 19.01.2018 is set aside as the third



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respondent is not entitled to make any recovery after expiry of five years from the date of the alleged payment. However with regard to the revision of pay, the third respondent shall issue notice to the petitioner and give the petitioner an opportunity to make his submissions before passing any order as to re-fixation of pay. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes /No
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