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W.P.No. 22860 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.22860 of 2015
and M.P.No.2 of 2015

V.Manoharan(Deceased)

2. M.Shanthi
3. M.Karthik
4. M.Banu

(P2 to P4 are substituted as LR's of Deceased plaintiff
as per Order dated 25.07.2024 in W.M.P.No.22194
of 2024 in W.P.No.22860 of 2015]

... Petitioners

Vs

1. The State of Tamil Nadu
Rep by the Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009.
2. The Director of School Education,
College Road, Nungambakkam, Chennai 600 006.
3. The Chief Education Officer,
Vellore District, Vellore
Respondents

...

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for



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all the relevant records relating to the impugned proceedings in Oo.Mu.No.3811/A3/2012 dated 28.07.2012, and its consequential impugned proceedings A.thi.Mu.No.6356/A3/12 dated 26.10.2012 and A.thi. Mu.No.1184/A3/13 dated 28.02.2014 passed by the 3rd respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, being violative of rules and regulations and the principles of natural justice and thereby directing the respondents to grant Selection Grade to the petitioner in the cadre of B.T. Assistant w.e.f 19.06.2012 with all consequential monetary and other service benefits without insisting the petitioner to repay the 3rd incentive increment amount within the time frame fixed by this Court.

For Petitioner : Mr.A.Rajendiran
For Respondents : Ms.Rajarajeswari
Government Advocate

ORDER

This is a case where the petitioner's movement to the selection grade has been denied stating that he has received one increment in excess of the recognized two increments.

2. The petitioner had been selected and appointed as Physical



Education Teacher under the respondent-Department on 05.11.1984.

He was thereafter promoted as B.T.Assistant (History) on 19.06.2002 and after putting 28 years of service, he had demitted office on 30.06.2012. The petitioner would submit that when he was working as P.T teacher which is equivalent to the secondary grade teacher, he had been granted the first increment with effect from 01.07.1989 after he had attained the higher qualification of M.P.Ed. Thereafter, while he was working as B.T.Assistant Teacher, he was awarded the second increment with effect from 19.06.2002 for obtaining a Master's degree. Thereafter, as he had acquired qualification of M.Ed in the year 1988, the third increment was also granted to him with effect from 19.06.2002 as per G.O.Ms.No.1023 dated 09.12.1993.

3. The petitioner had been promoted as B.T Assistant Teacher on 19.06.2002 and had put in 10 years of service in the said cadre from 19.06.2002 to 19.06.2012. Hence, he is eligible to be granted the selection grade. However, the same was not granted and the



petitioner's request was also forwarded and recommended by the School to the 3rd respondent-Department. However, instead of approving the said proposal and granting the selection grade, the third respondent had issued the impugned proceedings dated 28.07.2012 stating that as per G.O.Ms.Nos.1023 and 1024 dated 09.12.1993, only two increments could be granted and the 3rd increment granted for M.Ed qualification has been cancelled and the excess amount which was calculated had to be paid to the Government account. In the consequential impugned proceedings dated 26.10.2012 and 28.02.2014, it is stated that only after such excess amounts are remitted into the Government account that the claim of the petitioner to the selection grade would be considered. It is aggrieved by these orders that the petitioner is before this Court.

4. In the impugned order dated 28.07.2012, the petitioner was directed to pay the excess amount. In the impugned orders dated 26.10.2012 and 28.02.2014, the petitioner was informed by the third



respondent that his request for the selection grade would be considered only after the amounts received under the 3rd increment were deposited into the Government account.

5. Heard the learned counsels on either side and perused the materials available on record.

6. The impugned orders suffer from an irregularity. The petitioner is entitled to be placed under the selection grade as soon as he completes 10 years of service in the said post. The petitioner had been appointed as B.T Assistant on 19.06.2002 and therefore on 19.06.2012, after he had put in 10 years in that cadre, he was eligible to be granted the selection grade. The eligibility to a selection grade does not rest on the discretion of the authority but is a right to which the employee is entitled to as he completes 10 years of service in the same cadre. The respondents have committed a grave error by not recognizing the 10 years of service put in by the petitioner and using it



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to arm-twist the petitioner into paying the alleged excess amount paid to him. The petitioner retired on 30.06.2012 and the respondents, knowing fully well that they cannot recover the amount, are using the petitioner's request to force him to remit the same. Further, the Hon'ble Supreme Court, in the judgment reported in ***AIR 2015 SCC 696 [State of Punjab and others etc. Vs. Rafiq Masih (White Washer) and others]***, has clearly observed in paragraph 18(ii) that recoveries cannot be made from the retired employees or the employees who are due to retire within one year from the order of recovery. The petitioner, having retired as early as in the year 2012, the respondents cannot seek to recover the said amount from the petitioner. In the result, the Writ Petition is allowed as prayed for. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

25.07.2024



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Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

1. The Secretary to Government
Public Works Department
Chennai
2. The Engineer in Chief
Water Resource Development and
Chief Engineer (General)
Public Works Department
Chennai



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P.T.ASHA, J.,

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