



W.P.No.26392 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

W.P.No.26392 of 2012

AND

M.P.No.2 of 2012

V.Ayyadurai

... Petitioner

Vs

1.The Government of Tamil Nadu
Rep. by Secretary to the Government
Finance (Pay Cell) Department
Fort St. George, Chennai 600 009

2.The Secretary to the Government
Government of Tamil Nadu
School Education Department
Fort St. George, Chennai 600 009

3.The Director of School Education
College Road, Chennai 600 006

4.The Chief Educational Officer
Thanjavur District, Thanjavur

5.The Head Master
Government Girls Higher Seccondary School
Nanilam, Thiruvarur District

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 5th respondent in proceedings Na.Ka.No.167/2012 dated 28.06.2012 and quash the same and issue a consequential direction to the respondents to restore the pay of the petitioner as on 01.01.2006 in the pay band of Rs.15600-39100+Grade Pay 5400, as fixed in the proceedings of the 5th respondent in proceedings Na.Ka.No. 105/2011 dated 18.08.2011 with all benefits.

For Petitioner : Mr.R.Saseetharan
For RR1 to 4 : Ms.P.Rajarajeswari
Government Advocate

ORDER

The instant writ petition has been filed challenging the proceedings of the 5th respondent in Na.Ka.No.167/2012 dated 28.06.2012 and for a consequential direction to the respondent to restore the pay of the petitioner as on 01.01.2006 in the pay band of Rs.15600-39100+Grade Pay 5400 as fixed in the proceedings of the 5th respondent in Na.Ka.No.105/2011 dated 18.08.2011 with all benefits.



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WEB COP 2. The brief facts which are necessary for disposal of this instant writ petition are as under :

2.1. The petitioner was initially appointed as double part time Vocational Instructor in Audit & Accounts department on 18.07.1983 at Government Higher Secondary School, Iluppaithoppu, Thanjavur District. By proceedings of the Chief Educational Officer dated 11.03.1991, he was absorbed in the regular vacancy in the time scale of pay of Rs.1400-2600 w.e.f. 01.04.1990. By virtue of G.O.Ms.No. 712, Education Department dated 28.05.1990, the post of Grade-I Vocational Instructor for Higher Secondary was given time scale of pay of B.T. Assistant *i.e.*, Rs.1400-2600, and by the order of the Chief Educational Officer dated 25.04.2008, the petitioner was awarded Selection Grade pay w.e.f. 01.04.2000, on completion of 10 years of service in the post of Vocational Instructor Grade-I.

2.2. Further, by virtue of the proceedings dated 18.08.2011, pay fixation was ordered by the proceedings of the Head Master, Nanilam Government Girls Higher Secondary School/ 5th respondent, in and by which, the petitioner was



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awarded with notional pay from 01.01.2006 and the monetary benefit from 01.11.2011 onwards. However, based upon the audit report, the 5th respondent issued proceedings dated 28.06.2012 for refixation of pay from 01.04.2011 and also ordered for recovery of excess pay, which is assailed in this writ petition.

3. Learned counsel for the petitioner would contend that during the pendency of this writ petition, the Government has come up with G.O.Ms.No.306 Finance (CMPC) Department, dated 12.09.2018, through which, they refixed the scale of pay at Rs.15600-39100+Grade Pay Rs.5400 notionally w.e.f. 01.01.2006 or the date of award of Selection Grade in the post of Vocational Instructor with monetary benefits from 01.04.2013, in pursuance of the order in ***L.Natrajan vs State (W.P.(MD).Nos.2654, 2924 & 2663 of 2018 and 15980 & 17197 of 2014 decided on 19.03.2018)*** passed by the Madurai Bench.

4. In the said G.O.Ms.No.306, it has been further stated that the said pay is admissible to all the Vocational Instructors who were awarded Selection Grade pay prior to 01.01.2006 and those awarded Selection Grade between 01.01.2006 and 31.05.2009 and opted for the revised scale of pay, irrespective of the fact as to



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whether they have filed separate writ petition or not. In the present case, the petitioner was awarded with Selection Grade prior to 01.01.2006. Therefore, the said G.O.Ms.No.306 is applicable to the petitioner.

5. Learned Government Advocate appearing for the respondents 1 to 4 would also concede to the above said fact.

6. Learned counsel appearing for the petitioner would also rely upon the order dated 23.10.2019 passed by a Single Bench of this Court in ***N.Rajendran vs. N. Srinivasan (W.P.Nos.11999 and 12000 of 2013 decided on 23.10.2019)*** and would contend that the recovery order passed against the petitioner is to be set aside.

7. It is a well settled principle of law that if any fixation of pay is ordered in excess of an employee's entitlement and if the fixation so made is without the influence or misrepresentation of the employee, then, the same can be set aside. (See *State of Punjab and others vs. Rafiq Masih (White Washer's case)* [(2015) 4 SCC 334/.



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8. Therefore, this Court is of the firm view that by virtue of G.O.Ms.No.306, *supra*, the petitioner is entitled to have monetary benefit of time scale of pay of Rs.15,600-39100+Grade Pay 5400 w.e.f. 01.04.2013. Further, considering the fact that the excess pay which is sought to be recovered was not fixed owing to any misrepresentation made or fraud played by the petitioner. Further, any recovery would cause great prejudice to the petitioner at this length of time. Hence, this Court is inclined to set aside the recovery order. Accordingly, the recovery order is set aside and the respondents are directed to extend the benefit of G.O.Ms.No.306, *supra* to the petitioner.

With the above direction, the instant writ petition stands disposed of.
No costs. Connected C.M.P. is closed.

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Index : Yes/No

Neutral Citation : Yes/No



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C.KUMARAPPAN, J.

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