



WEB COPY



W.P.No.20159 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.20159 of 2016
and MP.Nos.17344 & 17345 of 2016

P. Venkatachalam

... Petitioner

Vs

1. The Director of Elementary Education
College Road, Chennai 600 006.
2. The District Elementary Educational Officer,
Tiruppur District, Tiruppur.
3. The Assistant Elementary Educational Officer,
Avinasi Panchayat Union,
Avinasi, Tiruppur District,
Tiruppur.
4. The Additional Assistant
Elementary Educational Officer,
Avinasi Panchayat Union,
Avinasi, Tiruppur District,
Tiruppur.

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the



W.P.No.20159 of 2016

records of the 2nd and 3rd respondents in relation to the proceedings issued in Na.Ka.No.2740/A5/2014 dated 03.12.2014 and in Na.Ka.No.082/A1/15 dated 08.02.2016 respectively and quash the same and issue consequential direction to the respondents to restore the pay of the petitioner at Rs.26,480/- as on 30.12.2010 with consequential benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.S.Prabhakaran
Government Advocate

ORDER

This writ petition has been filed for issuance of a writ of certiorarified mandamus calling for the records of the 2nd and 3rd respondents in relation to the proceedings issued in Na.Ka.No.2740/A5/2014 dated 03.12.2014 and in Na.Ka.No.082/A1/15 dated 08.02.2016 respectively and quash the same and issue consequential direction to the respondents to restore the pay of the petitioner at Rs.26,480/- as on 30.12.2010 with consequential benefits.



W.P.No.20159 of 2016

WEB COPY

2. The case of the petitioner is that he was initially appointed as Secondary Grade Teacher on 16.12.1983 at Panchayat Union Primary School, Kerudamuthoor in Pongaloor Panchayat Union, Coimbatore District. Thereafter, he was transferred to Avinasi Panchayat Union in the same District and was promoted as Primary School Headmaster on 05.06.2002, and then promoted as Middle School Headmaster and posted at Panchayat Union Middle School, Peranayakkanpudur, Avinasi Panchayat Union, Tiruppur District. Subsequently, while he was working as Middle School, Headmaster he retired from service on 31.05.2015, on attaining the age of superannuation. According to the petitioner as on 30.12.2010 his junior's pay was fixed at Rs.23,530/-, whereas he was paid Rs.21,970/-. The anomaly arose due to the fact that the junior was granted incentive increment at the rate of 3% of the basic pay for higher qualification in the revised scales of pay. Therefore a pay anomaly arose on 30.12.2010 and from 30.12.2010 his junior got more pay than him. On the basis of his representation for rectification of pay anomaly, the District Elementary Educational Officer by his order dated 25.04.2014 stepped up his pay to the level of his junior and fixed his pay at



W.P.No.20159 of 2016

Rs.26,480/- as on 30.10.2010 and further granted monetary benefits with effect from 01.01.2011. The Assistant Elementary Educational Officer by his proceedings dated 13.06.2014 passed consequential orders rectifying pay anomaly. The District Elementary Educational Officer, Tiruppur district by his order dated 03.12.2014 cancelled the order dated 25.04.2014 under which his pay was stepped up to the level of his junior on the ground that his junior was granted higher pay wrongly. The Assistant Elementary Educational Officer by the proceedings dated 06.02.2015 revised his earlier order dated 13.06.2014 on the ground that the order rectifying the pay anomaly was cancelled and revised his pay and fixed the same as on 30.12.2010 as per the original pay. In both the orders a direction for refund of the alleged excess sum in one lump sum were issued. Aggrieved by the said orders, the petitioner has filed the above writ petition.

3. The 2nd respondent filed counter and stated that the petitioner could not claim upgradation of pay on par with his junior as his junior was wrongly paid. It was submitted that the Assistant Elementary



W.P.No.20159 of 2016

WEB COPY

Educational Officer/3rd respondent passed two orders, one order in Na.Ka.No.3074/A1/14 dated 30.11.2015, directing the junior, Mrs.Irudhaya Maria Joseph to deposit the excess amount before the Government Treasury as per the rule and another order in Na.Ka.No.082/A1/15 dated 08.02.2016 directing the petitioner also to refund the excess amount received from 30.12.2010. As steps were taken to recover the excess pay from the said junior, the petitioner whose pay was stepped up on par with his junior was also bound to refund the same to the Accountant General, Government of Tamil Nadu.

4. The learned counsel for the petitioner relying on the judgment of the Hon'ble Supreme Court of India, reported in **(2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**, submitted that recovery could not be made, as the pay was wrongly fixed by the department without any the fault of the petitioner. The learned counsel therefore prayed to set aside the impugned order.



W.P.No.20159 of 2016

WEB COPY

5. The learned counsel for the respondent on the other hand submitted that the impugned order was unassailable.

6. Heard both sides and perused the materials available on record.

7. The petitioner's grievance was that the pay was incorrectly fixed by the respondent without any fault on his part and so the impugned order of recovery was not sustainable. The petitioner retired from service on 31.05.2015 and so post retirement, no recovery could be made from him. The petitioner relied on whitewasher's case in support of his submissions.

8. The issue of recovery was considered by the Hon'ble Apex Court in the judgment reported in **2015 (4) SCC 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)**. After considering various judgments on the issue, in para-18, the Hon'ble Apex Court has held as follows:



WEB COPY



W.P.No.20159 of 2016

"18.It is not possible to postulate all situations 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 hereinabove, 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 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



WEB COPY



W.P.No.20159 of 2016

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. "

The situations II and III mentioned in para-18 of the judgment referred to above are applicable to the facts and circumstances of the present case in as much as the excess pay paid for the period from 30.12.2010 was sought to be recovered and the petitioner retired from service on 31.05.2015.

9. In view of the above facts, the impugned orders of the 2nd and 3rd respondents dated 03.12.2014 and 08.02.2016 are liable to be set aside and are hereby set aside. In the result, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

10.09.2024

dpq
Index: Yes/No
Speaking order / Non speaking order

8/10



WEB COPY



W.P.No.20159 of 2016

N. MALA, J.

dpq

W.P.No.20159 of 2016
and MP.Nos.17344 & 17345 of 2016



WEB COPY



W.P.No.20159 of 2016

10.09.2024