



WEB COPY



W.P.No.12175 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.12175 of 2020
and W.M.P.Nos.14912 and 14914 of 2020

P.Raja

... Petitioner

Vs.

1. The District Educational Officer,
District Educational Office,
Perambur District.
2. The Correspondent,
Little Flower Higher Secondary School,
Annamangalam,
Vepanthattai Tk,
Perambalur District.
3. The Headmaster,
Little Flower Higher Secondary School,
Annamangalam,
Vepanthattai Tk,
Perambalur District.

... Respondents

[R1 cause title amended vide order dated 06.04.2023 made in
WMP.No.18162 of 2020 in W.P.No.12175 of 2020 by PDAJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent in



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Na.Ka.No.2566/A2/2020 dated 09.07.2020 and quash the same and consequently directing the respondents 1 to 3 to allow the petitioner to receive the enhanced salary and thus render justice.

For Petitioner : Mr.C.Vidhusan

For Respondents : Mr.P.Gurunathan
Additional Govt.Pleader[R1 & R2]

ORDER

This writ petition has been filed to quash the impugned order of the 1st respondent in Na.Ka.No.2566/A2/2020 dated 09.07.2020 and consequently direct the respondents 1 to 3 to allow the petitioner to receive the enhanced salary.

2. The petitioner was appointed as Watchman in the third respondent school on 21.09.1998 and subsequently, he was appointed as an Office Assistant on 08.03.2018. Construing the post of the Office Assistant as a promotion, a salary was fixed by giving one more increment. Thereafter, the audit objection was raised by stating that the salary for the post of Watchman and the Office Assistant is one and the same. Hence, the first respondent has passed the impugned order on



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09.07.2020 by stating that the order is only a transfer order and it is not a promotion order. Hence, the increment given by construing the transfer order as promotion order was cancelled and the excess payment made to the petitioner was ordered to be recovered.

3. Mr.P.Gurunathan, learned Additional Government Pleader appearing for the respondents submitted that in the order of the first respondent in Na.Ka.No.1794/ஆ1/2018, dated 10.05.2018, the word "பதவி உயர்வு" has been wrongly employed and that was the consequence of granting one more increment and obviously there is no scale of pay fixed for the post of Office Assistant because the post of Office Assistant and the Watchman are basic cadres and for which, the basic pay is one and the same.

4. The posting of the petitioner from Watchman to Office Assistant could only be a transfer and could not have been a promotion at all and the first respondent Office has committed a mistake by employing the word "promotion" in the order and had also allowed one increment. Therefore, an excess payment had been made but the excess payment is not a fault on the part of the petitioner. As far as the petitioner belongs to



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Group-D category Class III and Class IV service, the recovery part in the impugned order is concerned, which is impermissible in law as per the law settled in this regard in the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer's case*** for the sake of clarity). The relevant portion of the order in ***White Washer's*** case is extracted hereunder:

“(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 has 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 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 cover.”



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5. In view of the above settled principle, since the petitioner falls within the first category so far as the recovery part is concerned, that is impermissible in law, however, the cancellation of increment is concerned, that has rightly been cancelled by the first respondent, hence that portion of the order passed by the first respondent stands allowed and not disturbed.

6. In view of the above, the impugned order is quashed only with regard to the order of recovery of excess payment, but the order is confirmed with regard to the cancellation of the increment given in pursuant to the transfer order by construing it as a promotion. Accordingly, this writ petition stands disposed of. No costs. Connected miscellaneous petitions are closed.

29.02.2024

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
mp



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R.N.MANJULA, J.

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To

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Perambur District.
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Annamangalam,
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