IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.13848 of 2020
and
W.M.P.No.17211 of 2020

S.Athimoolam ...Petitioner

-Vs-

1.The State of Tamil Nadu
Rep by its Commissioner,
Adi Dravidar Welfare Department,
Chennai – 600 005.

2.The District Adi Dravidar & Tribal Welfare Officer,
Collector Office,
Cuddalore – 607 001.

3.The Head Master,
Government Adi Dravidar Welfare,
Higher Secondary School,
Dharmanallur, Cuddalore – 606 103. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the order in Na.Ka.No.W-11/11296/2018 dated 18.09.2020 issued by the second respondent read with the letter Na.Ka.No.51/2020 dated 20.09.2020 issued by the third respondent and quash the same as being illegal, arbitrary and unconstitutional and consequently direct the respondents to continue to pay pension to the petitioner without any refixation and recovery, with all attendant benefits, award costs and pass such further orders.

For Petitioner	:	Mr.C.K.Chandrasekaran
For Respondents	:	Mr.M.Rajendiran Additional Government Pleader

O R D E R

This writ petition has been filed to quash the impugned letter in Na.Ka.No.W-11/11296/2018 dated 18.09.2020 issued by the second respondent read with the letter vide Na.Ka.No.51/2020 dated 20.09.2020 issued by the third respondent and a consequential direction to the respondents to continue to pay pension to the petitioner without any refixation and recovery, with all attendant benefits.

2. Learned counsel appearing for the petitioner would submit that the petitioner was appointed as Post Graduate Teacher in February 1989 under the third respondent and got superannuated on 30.06.2018. Thereafter, the petitioner was given extension till the end of the academic year 2019 and started receiving his pension since July 2018. While so, the petitioner

received the impugned letter dated 20.09.2020 through WhatsApp from the school, third respondent herein, without furnishing the original letter. They also sent a letter of the second respondent dated 18.09.2020, wherein it was stated that there was some audit objection with regard to a training increment which was given to the petitioner in 1989 and the same comes to Rs.43,066/. The increment is also sought to be refixed after more than 28 years, after two years of his superannuation from service.

3. Learned counsel would further submit that the petitioner sent his representation dated 21.09.2020 expressing his objection to the letter sent by the third respondent for recovery of the aforesaid amount, stating that the proceedings have been initiated after a lapse of 10 years from the date of audit objection (09.06.2010) raised by the Accountant General of Tamil Nadu. Aggrieved by the aforesaid impugned letters, the present writ petition is filed.

4. Learned counsel for the petitioner would then place reliance on the order judgment passed by the Hon'ble Supreme Court of India in the case of **State of Punjab & Others etc. Vs. Rafiq Masih (White Washer) etc.** in

Civil Appeal No.11527 of 2014.

5. It is further submitted by the learned counsel that an order of interim stay was granted by this Court in W.M.P.No.17211 of 2020 in W.P.No.13848 of 2020 and the same is in force till date.

6. A counter affidavit was filed on behalf of the respondents in November 2020.

7. Learned Additional Government Pleader appearing for the respondents would submit that the Accountant General of Tamil Nadu raised an Audit Objection vide Lr.No.Pri/AG (GS & SSA) C43-003/2010-11 Despatch No.106 issued on 09.06.2010 with regard to the training increment given to the petitioner in 1989 and the same comes to the tune of Rs.43,066/-. Hence his pay was refixed and a proposal was made ready to recover Rs.43,066/- to recover from the pension of the petitioner.

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

9. In the case on hand, it is an admitted fact that the petitioner retired on 30.06.2018 on attaining the age of superannuation, was relieved from service on 30.06.2018 and the pension was granted to him from July 2018. While being so, the Accountant General of Tamil Nadu raised an audit objection vide Lr.No.Pri/AG (GS & SSA) C43-003/2010-11 dated 09.06.2010 for recovery of training increment given to the petitioner in 1989 to the tune of Rs.43,066/-. **However in view of the interim order granted by this Court at the time of admission, no recovery has been made to the petitioner.**

10. It is pertinent to mention that the recovery order dated 09.06.2010 was issued for recovery of the training increment which was given in the year 1989 that is after a delay of 21 years. This apart, the petitioner has superannuated from service on 30.06.2018 and the impugned order was passed only on 18.09.2020 that too after a delay of two years.

11. In view of the above facts and circumstances of the case, the ratio laid down by the Hon'ble Supreme Court of India in the case of

State of Punjab & Others etc. Vs. Rafiq Masih (White Washer) etc., the impugned letter in Na.Ka.No.W-11/11296/2018 dated 18.09.2020 issued by the second respondent read with the letter vide Na.Ka.No.51/2020 dated 20.09.2020 issued by the third respondent are liable to be set aside mainly on the ground of delay and latches since the aforesaid impugned letters have been issued after a lapse of 10 years from the date of audit objection i.e., on 09.06.2010 raised by the Accountant General of Tamil Nadu, which is after a delay of 21 years from the grant of incentive increment in the year 1989.

12. The respondents are directed to continue to pay pension to the petitioner without any refixation and recovery with all attendant benefits.

In the result, **the writ petition stands allowed with the above observations and direction**. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2024

cda
Index : Yes / No
Speaking/Non Speaking order

To

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