IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.15 of 2022
and W.M.P.No.16 of 2022

R.Jayasree ...Petitioner

-Vs -

1. The Director of Elementary Education,
Chennai – 600 006.

2. The Chief Educational Officer,
Perambalur.

3. The District Educational Officer,
Perambalur.

4. The Block Educational Officer,
No.2, Perambalur Block,
Perambalur.

5. The Regional Audit Officer,
District Educational Office,
Manapparai,
Tiruchirappalli District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order in proceedings Na.Ka.No.1326/A2/2018 dated 22.04.2019 of the fourth respondent, to quash the same and to issue consequential directions to the respondent to permit the petitioner to draw the existing pay and allowances, she has been drawing till date.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent dated 22.04.2019, thereby ordered to recover excess payment and also revised the salary of the petitioner.

2. The petitioner had joined as secondary grade teacher in the government aided school on 01.06.1987. Thereafter, she was appointed as secondary grade teacher in the panchayat union elementary school on 16.08.1988. She was elevated to selection grade and subsequently promoted to the post of elementary school Headmistress from 13.09.2004 and was elevated to selection grade on 01.06.2007. Thereafter, the petitioner was promoted to the post of middle school Headmistress on 22.08.2008.

3. While being so, the fourth respondent informed the petitioner, by the proceedings dated 22.04.2019 that, in the audit report

dated 08.12.2018, it has been pointed out as if her salary in the selection grade in elementary school Headmistress has been wrongly fixed from 01.06.2007 and it should be remitted back. Accordingly, the petitioner was directed to remit a sum of Rs.4,76,820/- towards excess pay and allowances drawn by the petitioner. Aggrieved by the same, the petitioner filed the present writ petitions.

4. The learned counsel appearing for the petitioner submitted that the selection grade to the post of elementary school headmistress was fixed as per the government order in force. Therefore, the audit objections is contrary to the law. Even assuming that the audit objection is correct and she was paid excess pay and allowances, she is being Group C employee, no recovery is permitted after the lapse of five years. The pay fixation was not ordered on the request made by the petitioner with false information. The selection grade in both posts viz., elementary school headmistress as well as middle school headmistress, were ordered only as per the government orders.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. On perusal of the counter filed by the fourth respondent and on the submission made by the learned Special Government Pleader revealed that the government letter dated 08.11.2010, issued thereby revised the selection/special grade in various post under the Tamil Nadu Revised Scale of Pay, on the recommendation of the one man commission. The petitioner was given option to remain in the old scale of pay till selection grade in the post of primary school headmistress by taking identical scale of pay of the lower post of secondary grade teacher.

7. Accordingly, guidelines were issued for fixation of pay in the revised selection grade/selection grade post in the case of employees awarded selection/special grade prior to 01.01.2006 and in whose cases the ordinary grade scale of pay have been revised based on the recommendations of one man commission. Accordingly, it shall be fixed as per the scale of pay indicated in the annexure-I. It shall be confined only to the employees who were awarded selection grade or special grade prior to 01.01.2006 and in the case of employees who have exercise their option to come over to the revised scale of pay on the date of their award of selection grade/special grade between 01.01.2006 and 31.05.2009 viz., prior to the issuance of G.O.Ms.No. 234, Finance (Pay Cell) Department

dated 01.06.2009. Accordingly, the petitioner gave option and consequently her pay in the category of primary school Headmistress was fixed in the post of primary school Headmistress. Therefore, the petitioner was wrongly awarded selection grade in the post of primary school Headmistress.

8. Admittedly, the petitioner was awarded selection grade in the year 1997 in the post of secondary grade teacher. After promotion to the post of primary school headmistress in the year 2004, there is no difference in the pay scale in the above said two posts and she was paid salary as that of the lower post. Therefore, she is entitled for the selection grade in the post of primary school headmistress. That apart, the excess payment was not paid on account of false representation made by the petitioner. Further the excess amount has been ordered to recover after the period of five years.

9. In this regard, it is relevant to rely upon the judgment reported in ***(2015) 4 SCC 334*** in the case of ***State of Punjab and ors Vs. Rafiq Masih (White Washer) and ors.***, in which the Hon'ble Supreme Court of India held as follows :-

> *"12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery. Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iii) 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.*
>
> *(iv) 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 recover."*

The Hon'ble Supreme Court of India categorically held that no recovery to be made as against Group III/IV or Group C/D employees. Further held that recovery shall not be made after the period of five years. The above judgment is squarely applicable to the case on hand. The petitioner is being the Group C employee, the excess payment cannot be ordered that too after the period of three years.

10. In view of the above discussions, the impugned order cannot be sustained and liable to be quashed. Accordingly, the order dated 22.04.2019 passed by the fourth respondent in proceedings Na.Ka.No.1326/A2/2018, is hereby quashed and the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

11.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts

G.K.ILANTHIRAIYAN. J,

rts

To

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