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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.5503 of 2021
and
W.M.P(MD).Nos.4367 and 4369 of 2021

S.Manimuthu ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep.by Secretary to Government
School Education Department,
Fort St.George, Chennai-600 009.

2.The Joint Director (Vocational)
Directorate of School Education,
DPI Compound, College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Ramanathapuram. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the impugned order passed by the third respondent dated 04.03.2021 bearing Na.Ka.No.8201/A3/2018.

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For Petitioner : Mr.R.Saravanan
For Respondents : Mr.S.Shaji Bino
Additional Government Pleader

O R D E R

The writ petitioner herein is a B.T.Assistant in the Government School and his services were regularized from 05.10.1996 onwards, through G.O.(2D).No.153, School Education (VE) Department dated 30.10.2015. Through the present impugned order, dated 04.03.2021, it is stated that the petitioner's pay fixation from 05.10.1996, should have been made only in the post of Secondary Grade Assistant, where actually the fixation is done for the post of Graduate Teacher and the respondents have sought to recover the excess payment.

2. The learned counsel appearing for the petitioner submitted that the petitioner had received the Secondary Grade salary from 10.06.2002 onwards and not from 05.10.1996 onwards.

3. The learned Additional Government Pleader submitted that the respondents, in the order granting Special Grade of pay, dated 30.12.2016,

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had stated that in case, the excess payment is made inadvertently, they are entitled to recover the same. In support of such submission, the learned counsel places reliance on the decision of the Hon'ble Supreme Court of India in the case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267.***

4. The present recovery order does not relate to any excess payment made prior to grant of Selection Grade of pay. On the other hand, the impugned order makes a reference to wrong fixation of pay to the post of Graduate Teacher, instead of Secondary Grade Assistant, with effect from 05.01.1996. It is, in this connection, the excess payment is sought to be revised and recovered. Hence, the grant of Special Grade of pay and the clause reserving their right to recover the excess payment, have no relevance to the present impugned order.

5. Insofar as the order, dated 04.03.2021 which seeks to recover the excess payment is concerned, the respondents have relied upon the wrong pay fixation made to the petitioner with effect from 05.10.1996 in the

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cadre of Graduate Teacher. The Hon'ble Supreme Court, in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4SCC 334,*** has held that when the excess payment has been made for the period in excess of five years, owing to the mistake of the Department, the recovery is impermissible. By applying the ratio laid down in ***White Washer's*** case supra, the present recovery order which seeks to recover the alleged excess payment made with effect from 05.10.1996 which is in excess of five years, cannot be sustained.

6. Accordingly, the impugned order dated 04.03.2021 passed in Na.Ka.No.8201/A3/2018 by the third respondent is quashed. Hence, this Writ Petition is allowed. No costs. Connected miscellaneous petitions are closed.

29.08.2022

Index : Yes / No
Speaking Order : Yes / No
ssb

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