

(2010) 06 MAD CK 0321

In the Madras High Court

Case No : Writ Petition No. 17784 of 2006 and M.P. No. 2 of 2006

K. Malliga

APPELLANT

Vs

The District Elementary Educational Officer, The Addl. Asst.
Elementary Educational Officer and The Correspondent R.C.
St. Philominol Elementary School Senthurai Panchayat Union

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Citation : (2010) 06 MAD CK 0321

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : R. Saseetharan, for the Appellant; P. Muthukumar, Government
Advocate for RR1-2, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—The prayer in the writ petition is for issuance of Writ of Certiorarified Mandamus to quash the order passed by the first respondent dated 31.05.2006 and consequently, to direct the respondents to grant salary to the petitioner for a period from 01.02.2005 to 14.04.2005, in the scale of pay of Rs. 4500-7000/- for she worked as Secondary Grade teacher in the third respondent School, in the place of incumbent - S. Arokiamary.

2. The facts leading to the filing of the writ petition are that the petitioner was appointed as Secondary Grade Teacher as a substitute in the place of E. Ganapushpam, for a period from 04.06.2004 to 30.11.2004, in the third respondent School, as the said teacher had gone on leave on loss of pay. The respondent-Department also approved the said appointment in the leave vacancy and the petitioner was also paid the salary in the scale of pay of Rs. 4,500-7,000/-. Subsequently, the petitioner was appointed as the substitute Secondary Grade Teacher in the place of T.S. Arokiamary, for a period from 17.01.2005 to 14.04.2005, in the third respondent School, as the said teacher went on maternity leave. The petitioner was paid the salary in the scale of pay of Rs.

4,500/- 7,000/-. Subsequently, by an order dated 31.05.2006, the first respondent directed the third respondent to recover a sum of Rs. 28,179/- from the petitioner stating that it is an excess amount paid, since as per G.O. Ms. No. 125 dated 12.11.2003 and G.O. Ms. No. 4 dated 19.01.2004, the vacancies in the Secondary Grade Teacher post with effect from 01.06.2003, shall be considered as Junior Grade post and the incumbent can be paid only a consolidated pay of Rs. 3,000/-. This order dated 31.05.2006, is impugned in the present writ petition.

3. The Learned Counsel for the petitioner would submit that the impugned order is liable to be set aside, since no notice was issued to the petitioner before the same was passed. Further, the appointment of the petitioner was only for a temporary period in respect of leave vacancy which arose in a sanctioned existing post and therefore, the same is not affected by G.O. Ms. No. 100 dated 27.06.2003 and the consequential amendment issued in G.O. Ms. No. 125 dated 12.11.2003 and the Government orders have no application. Further, it is contended that the petitioner was appointed in leave vacancy for two spells i.e., from 04.06.2004 to 30.11.2004 and from 01.02.2005 to 14.04.2005,. In respect of the first spell, no recovery has been ordered and recovery for the second spell is illegal. Further, the Learned Counsel would contend that in the absence of any fraud or misrepresentation by the petitioner, the question of recovery does not arise. Moreso, when the petitioner had discharged her duties as Secondary Grade Teacher for a period from 01.02.2005 to 14.04.2005, she is entitled for the salary in the approved scale of pay. The Learned Counsel relied upon the decision of the Hon'ble Supreme Court rendered in Syed Abdul Qadir and Others Vs. State of Bihar and Others, .

4. The Learned Government Advocate appearing for the respondents 1 and 2 by relying upon the counter affidavit would submit that in G.O. Ms. No. 100 dated 27.06.2003 and G.O. Ms. No. 125 dated 12.11.2003, clear-cut instructions have been given that all regular post in Government and aided Institutions are to be considered as Junior Grade posts from 01.06.2003 and the incumbents appointed in the said posts are eligible for consolidated pay only. The Government having taken a policy decision and issued G.O. Ms. No. 125 dated 12.11.2003, down grading the regular junior grade posts, the first respondent is not required to issue any separate order or notice. Further, it is contended that whenever a vacancy arises permanently in a teaching post, appointment shall be made only on consolidated basis and the petitioner is not entitled for time scale of pay. In view of the decision taken by the Government, the respondents were fully justified in ordering for recovery of the excess payment of Rs. 28,179/-.

Heard the Learned Counsel on either side.

5. The grievance of the petitioner in the present writ petition is regarding the salary payable to her for the period from 01.02.2005 to 14.04.2005, during which period she worked as a substitute Secondary Grade Teacher in the place of incumbent T. Arokiamary, who proceeded on maternity leave and was holding the

post of Secondary Grade Teacher in a existing sanctioned post.

6. The Learned Counsel for the petitioner would vehemently contend that the G.O. Ms. No. 100 dated 27.06.2003 and G.O. Ms. No. 125 dated 12.11.2003, have no application to the petitioner's case, since the appointment is not a permanent appointment and it is not a case of regular vacancy which arose after 01.06.2003. The vacancy was only a temporary vacancy in a regular sanctioned post and therefore, the petitioner who worked as substitute teacher should be entitled to the same scale of pay. In my view, this issue need not be considered in the present writ petition for more than one reason. Firstly, on the ground that the petitioner did not misrepresent or played any fraud so as to enable her to get the scale of pay warranting recovery. Secondly, the petitioner has worked during the said period and the temporary appointment has also been approved by the second respondent by a proceedings dated 18.02.2005. It is not in dispute that the proceedings dated 18.02.2005, approving the temporary appointment of the petitioner has not been canceled in the manner known to law. Therefore, it cannot be said that the petitioner is not entitled to monetary benefits already granted to her. As rightly pointed out by the Learned Counsel for the petitioner, the Hon'ble Supreme Court in the case referred supra, while considering the relief which can be granted by Court against recovery held as follows:

The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*; *Shyam Babu Verma v. Union of India*; *Union of India v. M. Bhaskar*; *V. Gangaram v. Director, Col. B.J. Akkara (Retd) v. Govt. of India*; *Purshottam Lal Das v. State of Bihar*; *Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur*.

Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to.

7. In the case on hand also, there is no allegation that the petitioner had misrepresented and secured the scale of pay. But the scale was paid to her pursuant to an order passed by the second respondent on 18.02.2005. Further, it has to be noted that the order of recovery has been issued without even issuing a show cause notice to the petitioner. Since, I am convinced that the petitioner is entitled to succeed on the first ground, the issue relating to applicability of G.O. Ms. No. 100 dated 27.06.2003 and G.O. Ms. No. 125 dated 12.11.2003, is not taken up for consideration and the said issue is left open.

8. In the result, the writ petition is allowed. The impugned order is quashed and consequently, the respondents are not entitled to effect any recovery of the Sum of Rs. 28,179/- paid to the petitioner for having functioned as substitute Secondary Grade Teacher for the stated period. There shall be no order as to costs. Consequently, connected M.P. is closed.