
(2014) 12 MAD CK 0306

In the Madras High Court

Case No : Writ Petition No. 14660 of 2005 (T) and O.A. No. 6339 of 2002

K. Muthusamy

APPELLANT

Vs

The Director of School Education, Chennai

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0306

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—The petitioner joined the service as Middle School Headmaster at A.Sembulichampalayam in Anthiyur Panchayat Union in Erode District. When the said school was upgraded as High School, an option was called as to whether he wanted to be absorbed in High School Service or to remain in the earlier service. He opted to go to High School Service.

2. In the circumstances, since he was a B.T. Grade Middle School Headmaster, he was absorbed in High School as B.T. Assistant with the protection of pay which he had received in the post of Middle School Headmaster. Subsequently, revisions were also given as if he was a Middle School Headmaster, while he was working as B.T. Assistant in the High School.

3. While so, the impugned order dated 14.10.2002 in Na.Ka.No.171/02, was passed by the third respondent Headmaster stating that the revision given to the petitioner from 01.06.1988 in the scale of pay of Middle School Headmaster was erroneous, therefore, the excess amount paid to him shall be recovered.

4. The petitioner filed O.A.No.6339 of 2002 challenging the said order, on abolition of the Tribunal, the matter stood transferred to this Court, renumbered as W.P.No.14660 of 2005.

5. Later, the petitioner was promoted as Headmaster in the High School. He retired from service on 31.05.2005 on reaching the age of superannuation. After

his retirement, the District Educational Officer, Gobichettipalayam, passed an order dated 21.07.2005 in Na.Ka.No.753/A4/2005, directing to withhold a sum of Rs.1, , 330/ from the DCRG of the petitioner, since the excess payment was given due to grant of revision of pay from 01.06.1988 treating the petitioner as Middle School Headmaster, while he was not a Middle School Headmaster as on that date. Accordingly, the said amount was retained in his DCRG.

6. Heard both sides.

7. The issue that arises consideration is as to whether the respondents are correct in stating that the grant of revision of pay to the petitioner treating him as Middle School Headmaster from 01.06.1988 while he was a B.T. Assistant during 1988 is correct ?

8. In my view, the petitioner is entitled to pay protection of Middle School Headmaster, since he was absorbed in the High School Service as B.T. Assistant due to the upgradation of the Middle School, wherein, he was employed. It is relevant to take note of the proceedings of the Commissioner, Secretary, School Education Department, Chennai, dated 15.06.1988, the said proceedings is extracted hereunder:

When upgrading the Panchayat Union Middle School as High School, should not be called with another name when inducting the Headmistress post in the Panchayat Union Middle School to High School, also without diminishing the pay of the teaching, non teaching staff of the school who are working in the Middle School. It has been informed that the fixing of pay may be continued in proper manner when upgrading the Panchayat Union Middle School as Higher Secondary School.

9. Furthermore, in a similar circumstance, in the common order dated 12.07.2002 in O.A.Nos. 6576 of 1995 etc. batch, the Tamil Nadu Administrative Tribunal held that the Middle School Headmaster, who are absorbed in the High School Service, are entitled to pay protection with all the benefits as if they are Middle School Headmaster. The said order dated 12.07.2002 in O.A.Nos. 6576 of 1995 is extracted hereunder :

"These are the cases of middle school headmasters absorbed in High School as School Assistant. After their absorption, pay protection has been given. In similar circumstances, in OA Nos. 694, 740 of 1995 etc., and a batch of cases on 22-2-2002 I have passed an order as follows :

"The petitioners should be given the same benefit as if they had continued as Headmasters, and consequential monetary benefits such as Selection Grade, Special Grade, including increments etc., should be given to them till their retirement.

?In the circumstances, the petitioners are entitled to some benefits. The petitioners shall be given selection grade and special grade including increments in the category of middle school headmasters, treating their service in High

School as Headmaster in middle school."

10. It is not in dispute that the aforesaid order of the Tribunal dated 12.07.2002 attained finality. In view of the aforesaid facts, I am of the view that the petitioner is entitled to get the pay of the Middle School Headmaster even though he was working as B.T. Assistant in the High School, in the said circumstances.

11. In fact I took a similar view in the order dated 09.09.2014 in W.P.No. 7980 of 2013 (V.George William V. Director of School Education, Chennai and Others) holding that such Middle School Headmasters, who are absorbed in the High School as B.T.Assistants, are entitled to the benefit of Middle School Headmaster.

12. It is also relevant to note that the revision of pay given in the year 1988 was sought to be recovered in the year 2002, i.e., after 14 years and even the recovery did not take place in the year 2002 and therefore, the same was sought to be made after the retirement of the petitioner in the year 2005, which is impermissible.

13. Furthermore, there is yet another infirmity in the action of the respondents, that is, before taking adverse decision, the petitioner was not heard. It is well-settled in a catena of decisions of the Apex Court that even in administrative decisions resulting in adverse civil consequences, the person should be heard. The Apex Court in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, held that the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially and has formulated certain principles in paragraph 47 of its judgment, and the relevant portion is extracted hereunder :

"47. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially."

14. For all the aforesaid reasons, the impugned order of the third respondent dated 14.10.2002 and the order dated 21.07.2005 are quashed and a direction is issued to the fourth respondent to settle the remaining DCRG amount, withheld by the respondents within a period of eight weeks from the date of receipt of a copy of this order. Since the DCRG amount was reasonably withheld by the respondents, the petitioner is entitled for interest on the belated payment of DCRG, as per Tamil Nadu Pension Rules.

15. This writ petition is ordered accordingly. No costs.