
(2011) 08 MAD CK 0199

In the Madras High Court

Case No : Writ Petition No. 29218 of 2005 and W.P.M.P. No. 31955 of 2005

M. Rangasamy

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0199

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : S. Mani, for the Appellant; N. Srinivasan, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—In these writ petitions, the Petitioners, who have joined as B.T. Wardens on 01.06.1998, have challenged the impugned order of the Government dated 08.11.1995 and also the recovery order passed by the third Respondent dated 26.07.2005, making recovery in respect of the excess payments stated to have been made by way of allowance and drawn by the Petitioners with effect from 01.06.1988 to 31.12.2004.

2. It is the specific case of the Petitioners that, in respect of sanctioning of advance increments which were effected from 01.06.1988, the date from which they were appointed was sanctioned by the authorities as per the Government Order dated 08.11.1995 and not at the instance of the Petitioners. It is also the case of the Petitioners that, even as per the impugned G.O.Ms. No. 860 Education, Science and Technology (E2) Department dated 08.11.1995, the employer has right to refix the salary from 01.06.1988, viz., the date of their appointment, and it has been specifically stated in the said Government Order that any excess payment already made to the Teachers by way of higher fixation of start of pay, need not be recovered and be waived as a special case. In spite of the above said specific provision available in the Government Order dated 08.11.1995, the third Respondent, while passing the impugned orders of

recovery has not only ignored the said clause of waiver available under the Government Order, but also having granted the increment from the month June,1988 till date, the same is sought to be recovered without even notice to the Petitioners and giving opportunity to them to defend their case, especially when they have not contributed for the payment of higher start of allowance from 01.06.1988 onwards.

3. On a reading of the impugned recovery orders made by the third Respondent, even though many details about the payments are discussed as per the Government Order, while admittedly, the scale has been fixed to the Petitioners as early as on 01.06.1988, which has been continuously paid upto 31.12.2004, it is not the case of the third Respondent in the impugned order that such fixation has been made either by mistake or by way of contribution by the Petitioners. In the absence of these two grounds, certainly the Petitioners are entitled to be heard before they are deprived of the payments, which were paid to them for more than 16 years. The Petitioners have obtained stay of the impugned recovery orders of the third Respondent from the date of filing of the writ petitions and the same is continuing till date.

4. In such view of the matter, on the basis that No. opportunity has been given before the recovery orders are passed, the writ Petitioners are entitled to succeed. Accordingly, the impugned orders of recovery passed by the third Respondent stand set aside and the writ petitions are allowed, however, with liberty to the third Respondent to give due opportunity to the Petitioners to explain their case, if it is found that excess amount has been received unlawfully. It is needless to state that, in that event, the third Respondent shall give adequate notice to the Petitioners before passing appropriate orders. No. costs. Connected miscellaneous petitions are closed.