

**(2011) 10 MAD CK 0064**

**Madras High Court**

**Case No:** Writ Petition No. 5139 of 2007

S. Pushparaj

APPELLANT

Vs

The District Elementary  
Educational Officer, Cuddalore,  
Cuddalore District and The  
Assistant Elementary Educational  
Officer

RESPONDENT

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**Date of Decision:** Oct. 13, 2011

**Hon'ble Judges:** D. Hariparanthaman, J

**Bench:** Single Bench

**Advocate:** K. Thennan, for the Appellant; R.M. Muthukumar, Government Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Honourable Mr. Justice D. Hariparanthaman

1. The writ petition is filed to direct the respondents to call for the entire records pertaining to the impugned order of recovery passed by the second respondent in his proceeding Na.Ka.No.231/A1/2000 dated 11.7.2001 and quash the same.

2. It is the case of the petitioner that the petitioner was working as Secondary Grade Assistant in Panchayat Union School from 18.08.1986 to 01.07.1997. He was promoted as B.T. Grade Headmaster in Middle School by the first respondent in his proceedings Na.Ka.No.3944/A6/97 dated 2.7.1997. The Time Scale of Pay of the of B.T. Grade Headmaster was granted to the petitioner from 2.7.1997 by the proceedings Na.Ka.No.227/A1/97 dated 15.7.1997 of the second respondent. While so, without any notice, the second respondent passed the impugned order in his proceedings Na.Ka.No.231/A1/2000 dated 11.7.2001 stating that the petitioner was erroneously promoted as B.T. Grade Headmaster in Middle School on 2.7.1997

overlooking one D. Venkatesan, who is the senior of the petitioner and therefore, he should be treated as B.T. Grade Middle School Headmaster only with effect from 22.12.2000 and not from 2.7.1997 and sought to recover the excess pay that was given to the petitioner as B.T. Grade Head master of Middle School from 2.7.1997 to 21.12.2000. Hence, the petitioner filed O.A.No.4597 of 2001 (W.P.No.5139 of 2007) to quash the impugned order of recovery passed by the second respondent in his proceeding Na.Ka.No.231/A1/2000 dated 11.7.2001.

3. No counter affidavit has been filed by the respondents.

4. Heard both sides.

5. The learned counsel for the petitioner submits that the impugned order passed by the second respondent is in blatant violation of the principles of natural justice as the petitioner was not heard before passing the same. It is also submitted that the petitioner was promoted as B.T. Grade Middle School Headmaster from 2.7.1997 based on his seniority only and not on the representation or mis-representation of the petitioner concerned. Hence, the respondents could not effect any recovery from the salary of the petitioner paid for the post of B.T Grade Middle School Headmaster. It is further submitted that since the petitioner is working as B.T. Grade Middle School Headmaster from 2.7.1997, the respondents could not recover from the salary on the principle of quantum meruit and the respondents should have paid to the petitioner as per the emoluments available in the aforesaid higher pay scale during the time he actually worked in the said post of B.T. Grade Middle School Headmaster.

6. In support of his submission, he relied on the decision of the Hon''ble Apex Court in Selvaraj vs.LT. Governor of Island, Port Blair and Others (1998 (II) LLJ 1191 (SC) ) and the decision of the learned Single Judge of this Court in N. Rajasekaran Nair vs. Secretary to Government, Municipal Administration and Water Supply department, Fort ST. George and Another (2006 (2) MLJ 420).

7. On the other hand, the learned Government Advocate seeks to sustain the impugned order of the second respondent stating that there was a mistake committed by the officials and hence, the order of recovery is sought to be sustained by this Court.

8. I have heard the submissions made on either side.

9. It is not in dispute that the petitioner discharged the functions of the B.T. Grade Middle School Headmaster from 2.7.1997 and hence, the salary could be paid to the post of B.T. Grade Middle School Headmaster as per the decision of the Hon''ble Apex Court Selvaraj vs. LT. Governor of Island, Port Blair and Others (1998 (II) LLJ 1191 (SC) ) (cited supra). The relevant portion of paragraph 3 of the said judgment is extracted hereunder:

Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of Rs.1640-2900. Consequently, on the principle of quantum meruit the respondent authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

10. The decision of this Court in *N. Rajasekaran Nair vs. Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George and Another* (2006 (2) MLJ 420) (cited supra) is also squarely applicable to the facts of this case. Paragraph 9 to 12 of the above said judgment are extracted hereunder:

In the decision reported in [Selvaraj Vs. Lt. Governor of Island, Port Blair and Others](#), in paras 3 and 4 the Hon'ble Supreme Court held that the pay of higher post is admissible when an employee is looking after duties of that post, the employee is entitled to get the higher post pay even though the said post is not to be treated as promotion.

In the other judgment cited by the learned counsel for the petitioner which is reported in *Jaswant Singh v. Punjab Poultry Field Staff Association*, (2002) I.S.C. 261, the Supreme Court held that even if a person promoted is not qualified to hold the post, but discharged the duties in the promotion post, he is entitled to get the pay and allowances admissible to the promotion post.

11. The above referred judgments of the Supreme Court are followed by a Division Bench of this Court in the decision reported in *Union of India v. Central Administrative* (2004) 1 A.T.J. 24.

12. The other objection that the promotion was given only as stop-gap arrangement is also answered by the Hon'ble Supreme Court in paras 6 and 7 of the decision reported in [Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others](#), . Therefore, the said objection is also unsustainable.

11. Furthermore, the learned counsel for the petitioner submitted that the promotion of the petitioner to the post of B.T. Grade Middle School Headmaster on 2.7.1997 was not on any misrepresentation on the side of the petitioner and hence as per the decision of the Hon'ble Division Bench of this Court in *Chief Engineer (General), Public Works Department, Chennai and Another vs. M. Thanasekaran* (2009 (5) MLJ (HC/SC) no recovery could be made. Paragraphs 3 and 4 of the said judgment are extracted hereunder:

As far as the recovery of excess salary, or excess payment made to an employee, the law is well settled. If the excess payment is made, on the misrepresentation of the

employee concerned, the State Government would certainly be entitled to direct for recovery of such excess payment. On the other hand, if the excess payment is made by the State even though by mistake, such excess payment cannot be recovered. To support the above, we may refer to the following judgments in (1) [Col. \(Retd.\) B.J. Akkara Vs. The Govt. of India and Others,](#) (2) [Shyam Babu Verma and Others Vs. Union of India \(UOI\) and Others,](#) (3) [Union of India \(UOI\) and Another Vs. M. Bhaskar and Others,](#) and (4) [V. Gangaram Vs. Regional Joint Director and others,](#) apart from referring to the judgment of the Apex Court referred by the learned single Judge.

4. In view of the above, we find no merit in the appeal as admittedly, the scale of pay was fixed by the appellant themselves and not on the representation or mis-representation of the employee concerned. Accordingly, the appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12. In the light of the above said decisions, the second respondent is not correct in passing the impugned order to effect the recovery. Therefore, the impugned order of recovery passed by the second respondent is liable to be quashed and the same is quashed accordingly.

13. The writ petition is allowed. No costs.