

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 8012 of 2006 (D)

PETITIONER:

P.C. MANI, SELECTION GRADE ACCOUNTANT
DISTRICT TREASURY, IDUKKI.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, DEPARTMENT OF, FINANCE
GOVERNMENT SECRETARIAT, TRIVANDRUM.
2. DIRECTOR OF TREASURIES,
OFFICE OF THE DIRECTOR, TRIVANDRUM.
3. THE DISTRICT TREASURY OFFICER,
DISTRICT TREASURY, IDUKKI.
4. THE ACCOUNTANT GENERAL (A & E)
ACCOUNTANT GENERAL'S OFFICE, TRIVANDRUM.

R1 TO 4 BY SPECIAL GOVERNMENT PLEADER SRI.M.V.LONACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 8012 of 2006 (D)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1: TRUE COPY OF THE PROCEEDINGS DT.22.03.1999
- P2: TRUE COPY OF THE AUDIT OBJECTION
- P3: TRUE COPY OF THE LETTER DT.02.02.2006 SENT BY THE DT.TREASURY OFFICER TO THE DIRECTOR OF TREASURIES.
- P4: TRUE COPY OF THE LETTER DT.27.02.2006.

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.

= = = = =

W.P.(C).No.8012 of 2006

= = = = =

Dated this the 12th day of November, 2015

JUDGMENT

- 1.This writ petition is filed challenging Exts.P3 and P4 orders directing recovery of excess amounts paid to the petitioner on account of irregular grant of higher grade. The petitioner submits that he was appointed as Junior Accountant on 09.05.1985. He was promoted as Treasurer on 25.05.1990 and as Senior Accountant on 20.11.1995. He was granted time bound higher grade on completion of 8 years service by Ext.P1 proceedings dated 22.03.1999 with effect from 01.11.1998. Subsequently, it is stated that audit objection was raised stating that the petitioner was not eligible for grant of the eight years time bound higher grade, since the post of Treasurer was an entry post. Recovery of amounts wrongly drawn by him was also ordered and communicated to the petitioner by Ext.P4 order dated 27.02.2006.

2.The question of eligibility of the petitioner for the benefit of time bound higher grade on completion of eight years of service stands covered against him by a decision of the learned single Judge in W.P.(C).No.551 of 2005 by judgment dated 04.02.2009. This Court by the said judgment held that the post of Treasurer was an entry post and though it was stated in the order of appointment of the petitioner that his appointment was by promotion, going by the special rules, the post of treasurer being entry post he could aspire for time bound grade promotion only on completion of 10 years of service in the entry post. In the above view of the matter, it was held that petitioners in those cases were not entitled to higher grade as applicable to a promoted post and would be eligible for higher grade only as applicable to entry post. In the said judgment, the claim for quashing the order of recovery of excess was also declined since the higher grades were sanctioned to the petitioners from 1999 onwards and proceeded for cancellation of the same had been initiated by order dated 01.12.2003. It was held in the said circumstances

that there was not much delay in initiating the proceedings for cancellation and recovery and therefore the recovery could not be set aside.

3. Heard learned counsel for the petitioner and the learned Government Pleader for the respondent. The learned counsel for the petitioner drew my attention to a distinction in this case inasmuch as the sanction of time bound higher grade on completion of eight years of service was granted in the petitioner's case by Ext.P1 order dated 22.03.1999. It is the specific case of the petitioner that proceedings for correction of the mistake and recovery of amounts wrongly paid was initiated in the instant case only by Ext.P3 audit objection on 02.02.2006. The first communication received by the petitioner was in February 2006. The learned counsel for the petitioner therefore relies on the judgment of the Apex Court in **State of Punjab and others v. Rafiq Masih (White Washer) and others** [(2015) 4 SCC 334], wherein, after considering the precedents available in the matter, the Apex Court has fixed

the guidelines with regard to recovery to be made in cases where payments have mistakenly been made by the employer in excess of entitlement. Paragraph 18 of the judgment reads as follows:-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. “

4. In the instant case the petitioner is a person who was due to retire on 31.03.2006. The audit objections were raised in his case on 02.02.2006. They were communicated to the petitioner on 27.02.2006, that is, hardly a month before his retirement. This falls squarely within the second condition in paragraph 18 of the judgment of the Apex Court. It is also an admitted case that the petitioner had been drawing salary of the time bound higher grade sanctioned to him w.e.f. 01.11.1998. The proceedings initiated for recovery of the excess was only in February, 2006. Therefore, the petitioner's case is squarely covered by the condition contained in Clause iii of Paragraph 18 of the judgment as well. In the above circumstances, this writ petition is disposed of holding that the petitioner was not entitled to higher grade as was granted in Ext.P1 order on completion of 8 years of service. However, recovery of excess amounts mistakenly paid to the petitioner shall not be carried out since the petitioner had availed the benefits for more than 5 years and the order of recovery was passed within a period

of one month from the date of his retirement. Exts.P2, P3 and P4 to the extent they direct recovery of amounts from the petitioner are therefore quashed.

The writ petition is ordered accordingly.

sd/-
Anu Sivaraman, Judge

sj