

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 21158 of 2012 (T)

PETITIONER:

**K.V.VIDYALATHA,
HEADMISTRESS (RETD.),
EAST U.P.SCHOOL NATTIKA,
THALIKKULAM P.O. - 680569.
(PULIPPARAMBIL HOUSE)
ENGANDIYOOR P.O., ETHAYI,
PALLIKKADAVU ROAD,
THRISSUR-680615.**

**BY ADVS.SRI.K.B.GANGESH
SMT.SMITHA CHATHANARAMBATH**

RESPONDENT(S):

- 1. ASSISTANT EDUCATIONAL OFFICER,
VALAPPAD, PIN - 680568.**
- 2. THE DEPUTY DIRECTOR OF EDUCATION,
THRISSUR - 680003.**
- 3. STATE OF KERALA,
REPRESENTED BY ITS SECRETAY,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM-01.**

BY GOVERNMENT PLEADER SRI.RAFEEK.V.K

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT-P1. TRUE COPY OF THE STATEMENT FOR FIXATION OF PAY IN HIGHER GRADE WITH EFFECT FROM 1.3.2006 SUBMITTED BY THE PETITIONER THROUGH THE HEADMISTRESS OF EAST U.P.SCHOOL NATTIKA ON 7.9.2009.
- EXHIBIT-P2. TRUE COPY OF LETTER DATED 12.4.2010 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT-P3. TRUE COPY OF LETTER DATED 6.5.2010 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT-P4. TRUE COPY OF ORDER DATED 30.9.2010 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT-P5. TRUE COPY OF THE ORDER DATED 29.6.2011 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P6. TRUE COPY OF LETTER DATED 2.3.2012 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT-P7. TRUE COPY OF REPRESENTATION DATED 27.4.2012 PREFERRED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT-P8. TRUE COPY OF ORDER DATED 2.7.2012 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT-P9. TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT ON 2.7.2012.
- EXHIBIT-P10. TRUE COPY OF LETTER DATED 27.7.2012 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 21158 of 2012

Dated this the 10th day of April, 2015

J U D G M E N T

Exts.P2 to P6 & P8 to P10 orders passed by the respondents are under challenge.

2. The petitioner alleges that by the impugned orders, her pay, pursuant to sanction of various time bound higher grades, has been fixed erroneously and accordingly, she is directed to refund the excess amount.

3. The petitioner demitted her office as Headmistress of East U.P. School Nattika, which is an aided school, on 30.04.2006. Pensionary benefits due to her have been sanctioned and disbursed to her. The petitioner is aggrieved by the action of the respondents as they have alleged that fixation of higher, senior and selection grades of the petitioner in 1987, 1997 and 2000 are irregular and the same ought to have been granted only on 27.11.1987, 27.11.1997 and 27.11.2000

..2..

respectively; and therefore, her salary has to be refixed. Accordingly, she will have to refund the excess amount received. The petitioner points out that the recovery could be effected only within four years after the retirement. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the 2nd respondent, they have admitted that the petitioner has continuous service from 07.06.1978 as LPSA. According to them, the ten years higher grade was sanctioned to the petitioner by excluding the period of leave without allowance availed for the period from 03.03.1982 to 30.03.1982. It was contended that the period of leave without allowance not supported by medical certificate would be deemed as un-qualifying service, has to be excluded from service for service benefits including grade fixations. According to the 2nd respondent, the erroneous fixation of pay was made on the basis of a duly signed declaration of the petitioner agreeing to refund the

..3..

excess drawn if found later on further scrutiny. According to them, though the petitioner had demitted her office on 30.04.2006 and the pensionary benefits have been released, the petitioner had consented in the pension book prepared and submitted in terms with Rule 117(a) that she would refund any amount, which she is not entitled.

5. Arguments have been heard.

6. According to the respondents, sanction of time bound higher grades to the petitioner in 1987, 1997 and 2000 are irregular as much as the same have been sanctioned taking into account 28 days of medical leave availed by her in 1982. According to the learned counsel for the petitioner, such a stand is irregular as availing of leave without allowance on medical grounds cannot be equated with availing leave without allowance for other reasons. Leave without allowance on medical grounds shall not be exempted for sanction of time bound higher grades; so submitted the learned counsel for the

petitioner. I see valid force in the submission.

7. Even if the objection raised by the respondents is accepted, the same cannot be enforced at this distant point of time. As per Rule 3C of Chapter I, Part III KSR, pay to an officer is recoverable only if such payments fall within a period of four years before his retirement. In this case, admittedly, mistaken pay fixations have been made in the years 1987, 1997 and 2000, which are beyond four years prior to the petitioner's retirement. The requisition for refund made by the respondents in the circumstances is illegal, arbitrary and is liable to be interfered with.

8. It is settled law that recovery on account of wrong pay fixation shall not be effected from the emoluments of an employee if the employee had no role in the wrong fixation of pay. In this case, the petitioner has not in any way misled the authorities to obtain the present fixations of her pay. Mistake, if any, has been committed by the concerned authorities.

Therefore, the petitioner cannot be penalized for the same at this point of time.

9. The apex court has occasion to consider the question of recovery of payment mistakenly given to the employee in **State of Panjab v. Rafiq Masih (White Washer)** [2015 (1) KLT 429 (SC)]. The apex court summarized 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 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.”

The petitioner's case falls squarely within Clause (iii) referred to above. Viewed in that profile also, the petitioner is entitled to succeed.

On a consideration of the entire materials now placed on record, this Court is of the view that the impugned orders shall not be allowed to stand.

In the result, the writ petition is allowed.

- Exts.P2 to P6 and P8 to P10 are quashed.
- It is hereby declared that the petitioner's pay is not liable to be refixed at this point of time and no amount need be refunded from the monthly pension of the petitioner on account of the wrong fixation of her pay while she was in service of East U.P. School Nattika.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-