IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.14294 of 2010 and
M.P.No.1/2010

P.NALAYINI ... Petitioner

Vs

1 THE PRINCIPAL OF ACCOUNT GENERAL (CIVIL AUDIT) TAMIL NADU AND PONDICHERRY 361 ANNA SALAI TEYNAMPET CHENNAI-18.

2 THE DISTRICT ADI-DRAVIDA AND TRIBAL WELFARE OFFICER ADI DRAVIDAR & TRIBAL WELFARE OFFICE, COLLECTORATE SALEM-1.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus, calling for the records to call for the records in respect of the proceedings of the 2nd respondent dated 01.06.2010 in Na.Ka.90409/99/T12 and quash the same consequently directing the respondents herein to disperse all retirement and pensionary benefits to the petitioner herein within an appropriate time.

For Petitioners: Mr.I.C.Vasudevan

For R1 : Mr. VijayaShankar

For R2 : Mr.V.Jaya Prakash Narayan
Spl.G.P

ORDER

The prayer is for a writ of certiorarified mandamus, calling for the records in respect of the proceedings of the 2nd respondent dated 01.06.2010 in Na.Ka.90409/99/T12 and quash the same consequently directing the respondents herein to disburse all retirement and pensionary benefits to the petitioner.

2. The petitioner was appointed as PET (teacher) on 23.11.1983 at Adi Dravidar Welfare School at Salem District. Thereafter,he passed B.A degree and B.Ed degree on 1988 and 1991 respectively. On completion of B.A degree, the petitioner was sanctioned increments for completion of Bachelor degree as per G.O.Ms.No.42 of 1969, Education Department. Thereafter, his pay scale was revised in the year 1985. As such from 01.01.1996 to 08.12.2003, the petitioner had received pay scale as per the fifth pay commission for the post of PET teacher. Thereafter, in the year 2003, the petitioner completed M.A degree in history. The same was recorded in the Service Register of the petitioner. Thereafter, the petitioner was promoted and transferred as Warden at Women Hostel at Mettur in the cadre of BT teacher. On considering the qualification of the Masters Degree acquired by the petitioner in the year 2003, the respondent provided increment to the petitioner as per G.O.Ms.No.42 and thereafter, finally, the petitioner retired from service on superannuation as BT teacher on 31.5.2008.

3. Thereafter, by impugned order dated 01.6.2010, the second respondent has sought for a recovery of a sum of Rs.43,080/- from the petitioner and the same according to the respondent has been paid excessively as increment sanctioned to the petitioner wrongly and the same was found and objected by the first respondent. Pursuant to the objections raised by the first respondent, the impugned order was passed by the second respondent as against which the present writ petition has been failed.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would contend that the increment was given to the petitioner rightly based on his acquiring the qualification and therefore, the same cannot be construed as wrong increment and accordingly, the audit objection raised by the first respondent cannot be sustained and therefore, consequently, the present impugned order would not be a sustainable one.

6. Per contra, the learned counsel for the respondents would contend that the petitioner was not entitled for the increment. However, it was wrongly calculated and given to the petitioner. Therefore, only on audit, it was found that the same was paid excessively by way of wrong calculation of increment and ultimately objection was raised and was directed to recover the same from the petitioner. Therefore, there is every justification on the part of the second respondent to issue impugned order which is fully sustainable.

7. I have considered the rival submissions made by the learned respective counsel.

8. Insofar as the present issue is concerned, the same is squarely covered by the authoritative pronouncement of the Hon'ble Apex Court in State of Punjab v. Rafiq Masih (white washer and others) reported in (2015) 4 SCC 334. In the said Judgment, at paragraph 18, the lordship have considered what are all the circumstances under which recovery proceedings cannot be made against the employees. The same is reproduced here for better appreciation:

> "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 the employees belonging to Class III and Class IV service (or Group C and Group D service).
>
> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from the 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."

9. In view of the said Judgment of the Hon'ble Apex Court, since the petitioner has already retired on 31.5.2008, the subsequent proceedings dated 01.06.2010 by way of impugned

order, cannot stand under the legal scrutiny and therefore, the same cannot be given effect to. In view of the same, this Court is inclined to quash the said order and accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1 THE PRINCIPAL OF ACCOUNT GENERAL (CIVIL AUDIT) TAMIL NADU AND PONDICHERRY 361 ANNA SALAI TEYNAMPET CHENNAI-18.

2 THE DISTRICT ADI-DRAVIDA AND TRIBAL WELFARE OFFICER ADI DRAVIDAR & TRIBAL WELFARE OFFICE COLLECTORATE SALEM-1.

+1cc to Mr.V.Vijay Shankar, Advocate Sr.68704
+1cc to M/S.I.C.Vasudevan, Advocate Sr.68447
+1cc to the Government Pleader Sr.68479

W.P.No.14294 of 2010

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srg 10/01/2017