

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.6.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.772 of 2016
and
C.M.P.No.9985 of 2016

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai 600 009.
2. The Director of School Education,
The Directorate of School Education,
D.P.I. Compound, College Road,
Chennai 600 006.
3. The Chief Educational Officer,
O/o. the Chief Educational Officer,
Panagal Buildings,
Thanjavur, Thanjavur District.,
4. The District Educational Officer,
O/o. District Educational Officer,
Nadimuthu Nagar, Pattukottai,
Thanjavur District.

Appellants/Respondent
Versus

V.Gunasekaran

Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.4.2013 passed in W.P.No.9924 of 2006 on the file of this court.

WP.No.9924/2006:Writ petition filed u/a 226 of the Constitution of India, seeking an order in the nature of certiorarified mandamus, to call for the records of the proceedings of the fourth respondent passed in Na.Ka.Nos.11162/A4/94 dt.29/01/1997, 3159/A1/97 dt.27.3.97 and 4704/04/A1 dt,3.11.05 and the proceedings of the 3rd respondent in Na.ka.Nos.5646/A1/05 dt.28.12.05 and quash the same with the consequential direction, directing the respondents to sanction pension and other retirement benefits by taking into account of existing scale of pay without any revision.

For appellants : Mr.K.Karthikeyan, Government Advocate

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Government Advocate appearing for the appellants. Notice to the respondent is dispensed with.

2. The writ appeal is filed challenging the order passed by the learned Single Judge in W.P.No.9924 of 2006, dated 22.4.2013.

3. The case in brief is as follows:-

The respondent V.Gunasekaran joined in service as Record Clerk 03.12.1970 under the fourth appellant and was promoted to the post of Junior Assistant in the year 1989 and subsequently became Assistant in the year 1994. On reaching the age of superannuation, he retired from service on 31.01.2006 after completing 35 years of service. The impugned order dated 29.01.1997 was issued by the fourth appellant whereby the respondent was informed that he had been paid an excess amount of Rs.52,662/- by the appellants and the same has to be deducted in a lumpsum. The Headmaster of the school, where the respondent was working prior to his retirement was directed to deduct the said amount from the amount payable towards the retirement benefit to the respondent. Challenging the same the writ petition was filed. Aggrieved against that order, the present writ appeal has been filed.

4. Firstly, before the learned Single Judge, the respondent had raised the question of arbitrariness on the part of the appellants in passing the impugned order to recover the the amount in lumpsum. It appears that the the error in fixation of pay was found after an inspection of the District Educational Officer for the period from November, 1995 to October, 1996. The respondent had retired from service on 31.1.2006. The Government sought to recover the excess amount, which is said to have been sanctioned by the Head Master concerned against the Rules. The respondent had filed an application in O.A.No.7165 of 1997 before the Tamil Nadu Administrative Tribunal, Chennai and also obtained an interim order against the recovery of the excess amount and pursuant thereon, the Chief Educational Officer, passed the impugned order dated 28.12.2015 directing the Head Master to recover the amount mentioned above and also there has been an order passed to recover the said amount while settling the terminal benefits as against which the writ petition was filed. Contentions were raised by the respondent regarding the order being passed for recovery on the ground of excess amount being paid by the wrong calculation by the Headmaster. Referring to various decisions of this court and Apex Court, a contention was raised that recovery sought to be made on the ground of disbursement on wrong calculation is against the law without there being any misrepresentation or fraud on the part of the workman.

5. The ratio laid down in the judgments in SAHIB RAM v. STATE OF HARYANA ((1995) SUPP (1) SCC 18) UNION OF INDIA v. REKHA MAJHI ((2000) 10 SCC 659) is to the effect that recovery of excess payment made by the authorities concerned, by wrong construction of the

relevant provision of law, without any misrepresentation by the employee, could not be made and the recovery of excess payment made to an employee could not be possible, since the person against whom the recovery was to be made, was the only breadwinner of the family and as she was, financially, not in a position to pay back the excess amount of dearness allowance that was paid in her favour.

6. The facts of this case clearly speaks that there was no misrepresentation by the respondent herein and it is only the calculation mistake being made at the instance of the authorities while fixing the pay scale and after the respondent herein had retired in 2006, the amount is sought to be recovered contending that excess payment is made

7. The decision of a Division Bench of this Court in P.ARUMUGAM VS. REGISTRAR, TAMIL UNIVERSITY [(2006) 3 MLJ 1025) is also to the effect that when the employee was not responsible for the wrong fixation, the excess payment made, the amount cannot be recovered, especially, after the retirement of the employee and when the recovery was sought and that too for after 17 years of service of the petitioner therein and that was also prohibited.

8. Referring to various decisions of this Court and the Apex Court, the learned Single Judge has rightly allowed the writ petition filed by the respondent herein. Moreover, there is no misrepresentation on the part of the respondent herein. The stand taken by the Government is that the respondent herein filed O.A. and then he had withdrawn the same and thereafter filed the writ petition and therefore, it amounts to res judicata.

9. The O.A. filed by the respondent herein was only withdrawn and it was not disposed of on merits and thereafter, the writ petition came to be filed. In such circumstances, we do not find any error committed by the respondent herein and there is no scope for recovery of the excess amount paid to him on some arithmetical calculation. In the absence of any misrepresentation by the respondent herein, the impugned order cannot be called into question. The learned Single Judge has rightly set aside the impugned order to recover the amount and it does not call for interference.

10. Therefore, the Writ Appeal does not merit for consideration, having regard to the settled legal position with regard to the recovery of the excess amount paid by the Government not due to fault on the part of the employee by way of misrepresentation, fraud, etc., but, due to the mistake committed by the authorities while calculating the salary on promotion, especially when the sum paid in excess viz., Rs.52,662/- is also not on the higher side. Be that as it may, the Writ Appeal is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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+1 cc to Govt.Pleader,Sr.36672.

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