BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.03.2016
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE C.T.SELVAM

W.A.(MD)No.432 of 2016
and
CMP.(MD)No.3052 of 2016

1.The Assistant Elementary Educational Officer,
Vedasandur, Dindigul.

2.The Deputy Accountant General/
CA & Madurai,
Office of the Principal Accountant
General (Civil Audit),
Tamil Nadu & Pondichery Branch Office,
A.Gs Avenue, 1st Floor, Press Colony,
Madurai. ... Appellants/Respondents 2 & 3

Vs.

1.R.Palaniammal ... Respondent-1/Petitioner

2.The Secretary,
Jaihind Aided Primary School,
Pachala Goundanoor,
Koovakkapatti Post,
Vedasandur Taluk,
Dindigul District 624 710
State of Tamil Nadu. ... Respondent-2/Respondent-1

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent against the order of this Court, dated 23.11.2010 made in W.P(MD) No.963 of 2009.

Prayer in WP(MD). 963/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 3rd respondent issued in his referenve No. PAG(CA)MDU dated 02/04/2008 so far as para 4 in part II(b) in the inspection report of accounts of the Assistant Elementary Educational officer, Vedasandur Dindiguil District for the period from November 2002-December 2007 (Date of Audit 09/01/2008-18/01/2008) is concerned and quash the same so far as para 4 in part II(b) in the inspectiion report of accounts of the Assistant Elementary Educational officer, Vedadandur, Dindigul District for the period from Novermber 2002-December 2007 (Date of Audit 09/01/2008 -18/01/2008) is concerned and the records relating to the impugned order of the 2nd respondent issued in his proceedings Na.Ka.No.304/அ.2/2008 dated 19.01.2009 and quash the same and direct the respondents to pay all terminal benefits and pension to the petitioner payable on account of superannuation without giving effect to the impugned order of the 3rd respondent issued in his reference No.PAG(CA)MDU dated 02.04.2008 and granting such other and further relief.

For Appellants	: Mr.VR.Shanmuganathan Special Government Pleader
For R1	: Mr.K.Vellaiswamy
For R2	: No Appearance

JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

Heard Mr.VR.Shanmuganathan, learned Special Government Pleader and Mr.K.Vellaiswamy, learned counsel for the first respondent.

2.Before the writ Court, respondent No.1 has sought for a writ of Certiorarified Mandamus to quash the order of the 3rd respondent issued, in his reference No. PAG(CA)MDU dated 02/04/2008, as regards para 4, in part II(b), in the inspection report of accounts of the Assistant Elementary Educational officer, Vedasandur, Dindiguil district, for the period from November 2002 - December 2007 (dated of audit 09/01/2008-18/01/2008) is concerned, para 4 in part II(b) in the inspection report of accounts of the Assistant Elementary Educational officer Vedadandur, Dindigul district, for the period from Novermber 2002-December 2007 (Date of Audit 09/01/2008 -18/01/2008), and the records relating to the impugned order of the 2nd respondent issued, in proceedings Na.Ka.No.304/அ.2/2008, dated 19.01.2009. He has prayed for a direction to the respondents to pay all the terminal benefits and pension on account of superannuation, without giving effect to the impugned order of the 3rd respondent issued, in his reference No.PAG (CA) MDU, dated 02.04.2008.

3.No counter affidavit has been filed in the writ petition.

4.Taking note of the Judgment of the Hon'ble Supreme Court in ***SYED ABDUL QADIR v. STATE OF BIHAR*** reported in ***2009 (3) SCC 475*** and in particular paragraph Nos.57 to 60, the writ Court vide order made in W.P.(MD)No.963 of 2009, dated 23.11.2010, set aside the orders impugned and further directed that if any recovery had already been made, the respondent No.1 is entitled for refund of the said amount. Writ Court further directed the appellants to pass appropriate orders, within a period of three months from the date of receipt of a copy of the order made in W.P.(MD)No.963 of 2009, dated 23.11.2010.

5.At this juncture, it is useful to extract paragraph Nos.57 to 60 of the Judgment in ***SYED ABDUL QADIR v. STATE OF BIHAR*** reported in ***2009 (3) SCC 475***, which read as follows:-

> "***57.***_This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous._
>
> ***58.***_The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur._
>
> ***59.***_Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries_

have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.

60..... *Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them."*

6.Though the appellants have assailed the correctness of the order made in writ Court on grounds, having regard to the recent decision of the Hon'ble Supreme Court in ***STATE OF PUNJAB AND OTHERS v. RAFIQ MASIH (WHITE WASHER) AND OTHERS***, reported in ***2015 (4) SCC 334***, we are not inclined to accept the challenge. In paragraph No.18 of the said Judgement, it has been held 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 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."

The case of the first respondent would squarely fall under Clause 18(ii) of the Judgement. Applying the above, we are find no merit in the appeal. Hence, the writ appeal is dismissed. No costs. Consequently, connected CMP.(MD)No.3052 of 2016 is also dismissed.

Sd/-
Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

To
1.The Assistant Elementary Educational Officer,
Vedasandur, Dindigul.

2.The Deputy Accountant General/
CA & Madurai,
Office of the Principal Accountant
General (Civil Audit),
Tamil Nadu & Pondichery Branch Office,
A.Gs Avenue, 1st Floor, Press Colony, Madurai.

+one cc to The Special Government Pleader in SR.No.16093

rj2
CSL/AAL-MPA/04.04.2016/5P/4C

W.A.(MD)No.432 of 2016
21.03.2016