



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**

and

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

W.A(MD)Nos.86 and 87 of 2013

and

M.P(MD)Nos.2 and 2 of 2013

C.Mariappan

.. Appellant

in W.A(MD)No.86 of 2013

M.C.S.Durai

.. Appellant

in W.A(MD)No.87 of 2013

Vs.

1.The Secretary to the Government,
Tamil Nadu Charitable and Endowments
and News Department,
Fort St. George,
Chennai.

2.The Accountant General (A&E),
Chennai.

3.The Commissioner,
Hindu Religious and Charitable Endowments Dept.,
Chennai - 34.

.. Respondents in
both W.As.

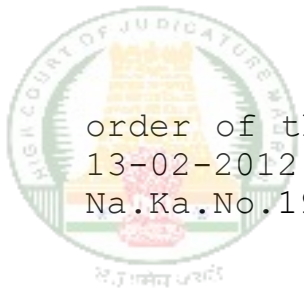
PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent Act against the orders dated 16.08.2012 passed in W.P(MD)Nos.5022 and 5005 of 2012.

Prayer in WP(MD). 5022/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the third respondent in Na.Ka.No.1942/2010-3/J1(4) dated 13.02.2012 and Na.Ka.No.1942/2010-5/J1(4) dated 13.02.2012 and Na.Ka.No.1942/2010-6/J1(4) dated 13.02.2012 and quash the same.

Prayer in WP(MD). 5005/ 2012 :

<https://hcservices.ecourts.gov.in/hcservices/> Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI, calling for the records pertaining to the impugned



order of the third Respondent in Na.Ka.No.1942/2010-4/J1(4), dated 13-02-2012 and Na.Ka.No.1942/2010-5/J1(4), dated 13-02-2012 and Na.Ka.No.1942/2010-6/J1(4), dated 13-02-2012 and quash the same.

For Appellant
in both W.As.

: Mr.C.Jegannathan

For Respondents 1 and 3
in both W.As.

: Mr.R.Velmurugan,
Government Advocate.

For Respondent No.2
in both W.As.

: Mr.P.Gunasekaran

COMMON JUDGMENT

[Common Judgment of the Court was made by **M.SATHYANARAYANAN, J**]

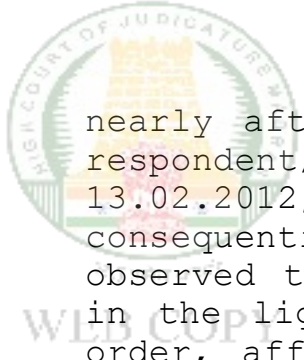
By consent, these writ appeals are taken up for final disposal.

2.The appellant in W.A(MD)No.86 of 2013 is the petitioner in W.P(MD)No.5022 of 2012. The appellant in W.A(MD)No.87 of 2013 is the petitioner in W.P(MD)No.5005 of 2012.

3.The appellant in W.A(MD)No.86 of 2013 was appointed as Junior Assistant and after periodical promotion, he came to the position of Deputy Chief Audit Officer and he retired from service on reaching the age of superannuation on 30.04.2006. The appellant in W.A(MD)No.87 of 2013 was appointed as Audit Inspector during the year 1976 and at the time of his retirement on 30.06.2008, he was working as Deputy Chief Audit Officer.

4.The pay scales of both of them were fixed on par with one S.Annamalai, who was junior to them, vide proceedings of the Hindu Religious and Charitable Endowments Department, dated 22.10.1999 and 28.12.1999 along with two others from Rs.2650/- to Rs.2,900/- in terms of FR 27(2). The third respondent, namely, the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, vide proceedings dated 13.02.2012, has taken into consideration the audit objections and found that though Mr.S.Annamalai was junior, he was drawing higher scale of pay than the appellants even on promotion and whereas the appellants herein/writ petitioners are not entitled to get the same and therefore refixed the scale-of-pay with the consequential order to recover the arrears as well as pension.

<https://hcservices.ecourt.gov.in/hcservices/> 5.The appellants in these appeals made a challenge to the said order by filing the writ petitions. The Learned Single Judge of this Court vide common order dated 16.08.2012, has found that



nearly after 17 years of revision of pay scales, now the third respondent/third appellant herein vide proceedings dated 13.02.2012, thought fit to refix the scale of pay with the consequential order to recover the arrears as well as pension and observed that the impugned order of recovery cannot be sustained in the light of the settled principles of law, namely, that an order, affecting the civil right of the party cannot be passed, without following the principles of natural justice and furthermore, that the benefits, even if given wrongly, cannot be withdrawn with retrospective effect in absence of any allegation of fraud or misrepresentation and ultimately allowed the writ petitions and quashed the impugned orders in so far as the recovery alone is concerned. The petitioners in the above writ petitions, challenging the legality of the common order, had filed these writ appeals on the ground that while refixing the scale of pay, admittedly, they were not put on notice and therefore, the said vital aspect has been overlooked, while passing the impugned orders and therefore, the impugned orders in the writ petitions require interference.

6.Per contra, the learned Government Advocate appearing for the respondents 1 and 3 would contend that the official respondents are also contemplating to file writ appeals and also invited the attention of this Court to the decisions of the **Hon'ble Supreme Court in Col.B.J.Akkara (Retd.) v. Government of India and others** reported in (2006)11 Supreme Court Cases 709 and in **Syed Abdul Qadir and others v. State of Bihar and others** reported in (2009)3 Supreme Court Cases 475 and would contend that in the light of the ratio laid down in the said Judgments, there cannot be any bar for refixation of the pay scales and further invited the attention of this Court to the Judgment of the **Hon'ble Supreme Court** dated 29.07.2016 made in Civil Appeal No.3500 of 2006 in **High Court of Punjab and Haryana and others v. Jagdev Singh** and would contend that if the concerned employee was put on notice and any payment found to have been made in excess, would be required to be refunded and from the facts of the case, it is found that the officer concerned, while opting for the revised pay scale, is bound by the undertaking and in the light of the said ratio, the impugned orders passed in the writ petitions, which are granting liberty to the official respondents for refixation of pay, cannot be interfered with and prays for dismissal of these writ appeals.

7.This Court paid its best attention to the rival submissions and perused the materials placed before this Court.

8.It is relevant to extract paragraph Nos.28,29 and 30 of the decision of the **Hon'ble Supreme Court in Col.B.J.Akkara (Retd.) v. Government of India and others** reported in (2006)11 Supreme Court Cases 709:



not to recover excess payment, is made as a consequential direction, after the main issue relating to the validity of the order refixing or reducing the pay/allowance/pension is decided. In some cases, the petitioners may merely seek quashing of the order refixing the pay and may not seek any consequential relief. In some cases, the petitioners may make a supplementary prayer seeking instalments in regard to refund of the excess payment if the validity of the order refixing the pay is upheld. In some other cases, the petitioners may pray that such excess payments should not be recovered. The grant of consequential relief would, therefore, depend upon the consequential prayer made. If the consequential prayer was not for waiving the excess payment but only for instalments, the court would obviously consider only the prayer for instalments. If any decision which upholds the refixation of pay/pension does not contain any consequential direction not to recover the excess payment already made or contains a consequential direction to recover the excess payment in instalments, it is not thereby laying down any proposition of law but is merely issuing consequential direction in exercise of judicial discretion, depending upon the prayer for consequential relief or absence of prayer for consequential relief as the case may be, and the facts and circumstances of the case. Many a time, the prayer for instalments or waiver of recovery of excess, is made not in the pleadings but during arguments or when the order is dictated upholding the order revising or refixing the pay/pension. Therefore, the decision in Sujatha Vedachalam will not come in the way of relief being granted to the pensioners in regard to the recovery of excess payments".

9. It is also relevant to extract paragraph Nos. 57, 58 and 59 of the decision of the **Hon'ble Supreme Court** in **Syed Abdul Qadir and others v. State of Bihar and others** reported in **(2009) 3 Supreme Court Cases 475**:

"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.

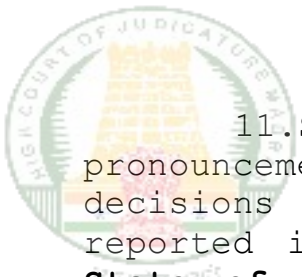
58. The relief against recovery is granted by courts not because of any right in the employees, but in exercise of judicial discretion to relieve the employees from the hardship that will be caused if



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., 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, See Sahib Ram vs. State of Haryana[1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

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 appellants-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 appellants-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".

10.In **State of Punjab and others, etc. v. Rafiq Masih (White Washer), etc.** reported in 2015(5) CTC 455, similar issue arose for consideration and the **Hon'ble Supreme Court** taking into consideration the decisions in **Col.B.J.Akkara (Retd.) v. Government of India and others** reported in (2006)11 Supreme Court Cases 709, **Syed Abdul Qadir and others v. State of Bihar and others** reported in (2009)3 Supreme Court Cases 478 (cited supra) and also in **Shyam Babu Verma v. Union of India** reported in 1994(2) SCC 521, has summarised the situations/circumstances, wherein recoveries by the employers would be impermissible in law.



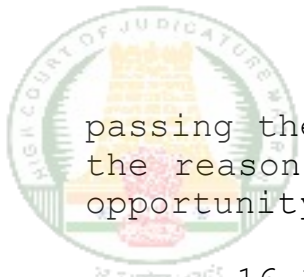
11. Subsequently, a reference was made for authoritative pronouncement on the apparent difference of opinion in the decisions in **Shyam Babu Verma v. Union of India and others** reported in 1994 (2) SCC 521 (cited supra), **Sahib Ram Verma v. State of Haryana** reported in 1995 (1) SCC Supp. 18 and **Chandi Prasad Uniyal and Ors. and others v. State of Uttarakhand and others** reported in (2012) 8 Supreme Court Cases 417 and the Three-Judge Division Bench of the Hon'ble Supreme Court held that there is no conflict in the views expressed by the Judgments referred to in the reference and therefore the reference was unnecessary.

12. In the decisions in **Col. B.J. Akkara (Retd.) v. Government of India and others** reported in (2006) 11 Supreme Court Cases 709, **Syed Abdul Qadir and others v. State of Bihar and others** reported in (2009) 3 Supreme Court Cases 478, it has been held that the excess amount paid, cannot be recovered. In the Judgment in Civil Appeal No. 3500 of 2006, dated 29.07.2016, on the facts of the case, it has been held that the officer to whom the payment was made in the first instance was clearly placed on notice as to the recovery of the same in the event of payment being made in excess and also in the light of the undertaking, while opting for the revised pay scale. In the case on hand, a perusal of the impugned orders would disclose that such a stand or reasons have not been cited.

13. The fact remains that the refixation was done in favour of the appellants as early as on 22.10.1999 and 28.12.1999 respectively and it is sought to be set at naught by passing the impugned orders dated 13.02.2012, nearly after 13 years. The learned Single Judge has taken note of the said aspect and also well settled legal principles as enunciated in the above said decisions, correctly reached the conclusion that the excess payment made to the writ petitioners/appellants herein, cannot be recovered. However, according to the learned counsel for the appellants, the refixation of pay was done correctly by taking into consideration of the fact that their junior namely S. Annamalai was drawing higher scale of pay and in any event while refixation of scale of pay, they ought to have been put on notice.

14. This Court heard the learned Government Advocate appearing for the respondents 1 and 3, on the said submission.

15. Admittedly, refixation of scale of pay was done as early as on 22.10.1999 and 28.12.1999 respectively and nearly after 13 years, without putting the writ petitioners/appellants on notice, their scale of pay has been refixed on the ground that their junior S. Annamalai was drawing higher scale of pay, much earlier than that of the writ petitioners/appellants. The refixation of pay has been done without putting them on notice, affecting the civil right of the appellants/writ petitioners. In all fairness, the third respondent ought to have put them on notice, before



passing the said order. But, admittedly it has not been done, for the reason that the impugned orders do not disclose the notice or opportunity have been provided to them before passing the order.

16. In the result, the writ appeals are partly allowed and in so far as the impugned order directing the respondents not to recover the excess amount already paid, is sustained and it is remanded to the third respondent for the purpose of adjudicating the issue as to whether the refixation of scale of pay can be done or not? The impugned orders dated 13.02.2012 passed by the third respondent shall be treated as show cause notice and the appellants/writ petitioners are directed to submit their representations within a period of three weeks from the date of receipt of a copy of this order and on such receipt of representations, the third respondent is directed to consider the same on merits and in accordance with law and after providing with the appellants/writ petitioners, opportunity of personal hearing, pass orders within a further period of eight weeks thereafter and intimate the decision taken, to the appellants/writ petitioners.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ((P&A)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to the Government,
Tamil Nadu Charitable and Endowments
and News Department, Fort St. George, Chennai.
2. The Accountant General (A&E), Chennai.
3. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 34.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.56100

+1 CC to Mr.C.JEGANATHAN, Advocate, SR No.55966

+1 CC to Mr.P.GUNASEKARAN, Advocate, SR No.56493

**COMMON JUDGMENT MADE IN
W.A(MD)Nos.86 and 87 of 2013 and
M.P(MD)Nos.2 and 2 of 2013
26.09.2016**