

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.17765 of 2011

A.Chakravarthi

.. Petitioner

Vs

1.The Director of School Education,
D.P.I. Complex, Nungambakkam,
Chennai - 6.

2.The Chief Educational Officer,
Vellore.

3.The District Education Officer,
Thirupattur.

4.The Headmaster,
Government Higher Secondary School,
Karnampattu,
Katpadi Taluk, Vellore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the entire records in pursuant to the proceedings of the third respondent in Na.Ka.No. 690/Aa/2010, dated (Nil).02.2010 and in Na.Ka.No.5349/A1/2010, dated (Nil).03.2010 and the letters issued by the fourth respondent in Na.Ka.No.43/10, dated 14.05.2010 and in Na.Ka.No.43/10, dated 14.06.2010 and quash them and direct the respondents to fix the basic pay of the petitioner on 01.01.2006 as Rs.29,910/- instead of Rs. 29,400/- in the revised pay scale of Rs.15,600-39,100/- and pay the consequential benefits within a stipulated time.

For Petitioner : Mr.T.P.Prabhakaran

For Respondents : Mr.R.Govindasamy
Special Govt. Pleader
(for R1 to R3)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the entire records in pursuant to the proceedings of the third respondent in Na.Ka.No. 690/Aa/2010, dated (Nil).02.2010 and in Na.Ka.No.5349/A1/2010, dated (Nil).03.2010 and the letters issued by the fourth respondent in Na.Ka.No.43/10, dated 14.05.2010 and in Na.Ka.No.43/10, dated 14.6.2010 and quash them and direct the respondents to fix the basic pay of the petitioner on 01.01.2006 as Rs.29,910/- instead of Rs.29,400/- in the revised pay scale of Rs. 15,600-39,100/- and pay the consequential benefits within a stipulated time.

2. The petitioner was appointed as P.T. Assistant on 26.07.1972 in the Government Higher Secondary School, Vembakkam, Cheyyar Taluk. Later, he was promoted as P.G. Assistant on and from 01.03.1984 and, thereafter, from 01.03.1994, he was designated as Selection Grade P.G. Assistant. Ultimately, he retired from service on 31.10.2008, while holding the post of Selection Grade High School Headmaster. In all, the petitioner has put in over 36 years of service.

3. It is the specific case of the petitioner that at the time of retirement he was drawing pay in the pay scale of Rs.8000-275-13500 and based on the same, his pension was fixed at Rs.10,294/- as on 01.11.2008. Pursuant to the revision of pay by virtue of VI Pay Commission, the petitioner's pay scale was revised as Rs.15,600-39,100/-.

4. It is stated that as on 31.12.2005, the petitioner's basic pay was Rs.13,175/- and as his increment falls due on 1st July of every year, his revised scale of pay was fixed at Rs.29,910/- as on 01.01.2006 and he was also entitled to arrears. The petitioner made a claim to respondents 3 and 4 seeking arrears, but the said respondents refused to pay the same stating that the petitioner was paid one excess increment of Rs.275/- per month in the basic pay.

5. After exchange of correspondence, the fourth respondent, by proceedings dated 14.06.2010, directed the petitioner to calculate the excess payment received by the petitioner after promotion to the post of Headmaster and pay the same to the Government Treasury, without specifying the actual amount which has been paid in excess.

6. It is averred that third respondent vide proceedings dated 28.01.2011 directed the fourth respondent to receive the arrears of pay from 01.01.2007 and pay the same to the

petitioner immediately and intimate the same to the third respondent. However, it is alleged that the fourth respondent did not make any payment to the petitioner.

7. Under such circumstances, the present writ petition is filed for the relief stated supra.

8. The learned counsel for the petitioner submits that there was no excess payment made to the petitioner as pointed out by the respondents from 15.09.2000 to 31.12.2005 and, therefore, the petitioner is not liable to pay any amount towards excess payment. In any event, it is submitted that such excess payment, if any, was not on account of any misrepresentation by the petitioner and, therefore, the respondents are not entitled to recover the same from the petitioner.

9. It is further contended that the petitioner is entitled to enhancement of DCRG amount and pension amount and refusal to pay the arrears arising out of revision of pay by stipulating a condition that the petitioner should calculate and remit the excess payment made due to wrong fixation is legally untenable and liable to be set aside.

10. I heard Mr.T.P.Prabhakaran, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 3 and perused the documents on record.

11. In the case on hand, the petitioner has admittedly retired from service on 31.10.2008 and his pay was revised and fixed as on 01.01.2006 at Rs.29,910/-. It is not the case of the respondent authorities that the petitioner had misrepresented and by dint of such misrepresentation, excess salary was paid to the petitioner. Be that as it may, it is the specific case of the petitioner that he was never paid any excess increment and, therefore, there is no consequential excess payment received by him.

12. The Hon'ble Supreme Court in Sahib Ram v. State of Haryana and Ors. 1995 Supp (1) SCC 18, while considering the issue regarding recovery of excess salary paid on account of wrong fixation, observed thus:

"5. it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

13. In *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334, the Supreme Court held as under:

"Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in *Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475, that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation."

(emphasis supplied)

14. In the light of the law enunciated in the decisions, referred supra, in my considered opinion, in the case on hand, the respondent authorities are not entitled to recover any amount from the petitioner or reduce his salary on the ground that excess payment was already made to him, as admittedly the petitioner was not the reason for such wrongful fixation of salary, if any, and the petitioner had retired from service long back, after rendering 36 years of unblemished service.

15. In the result:

(a) the writ petition is allowed by setting aside the impugned orders passed by the 3rd respondent in Na.Ka.No.690/Aa/2010, dated (Nil).02.2010 and in Na.Ka.No.5349/A1/2010, dated (Nil).03.2010 and the letters issued by the 4th respondent in Na.Ka.No.43/10, dated 14.05.2010 and in Na.Ka.No.43/10, dated 14.06.2010;

(b) the respondents are directed to fix the basic pay of the petitioner as on 01.01.2006 at Rs.29,910/- and to pay all consequential benefits;

(c) the said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Director of School Education,
D.P.I. Complex, Nungambakkam,
Chennai - 6.

2.The Chief Educational Officer,
Vellore.

3.The District Education Officer,
Thirupattur.

4.The Head Master,
Govt. Higher Secondary School,
Karnampattu, Katpadi taluk, Vellore district

+1cc to the Government Pleader, S.R.No. 57905

+1cc to Mr.T.P.PRABHAKARAN, Advocate, S.R.No. 57056

W.P. No.17765 of 2011

kan (CO)
TR(16/03/2018)