

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.9.2017

CORAM :

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

Writ Petition No.12572 of 2006

C.Muthu Reddi

.. Petitioner

Vs.

1.The Assistant Accounts Officer,
Office of The Accountant General (A&E)
Chennai - 600 018.

2.The Government of Tamil Nadu,
Rep. by the Secretary to the Government,
Education (School) Department,
Fort St. George, Chennai - 600 009.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the 1st Respondent dated 25.4.2005 issued in Pen.I/5/2005-06/7 and the order of the 2nd Respondent dated 5.3.2001 issued in G.O. Ms. No.38 (Education) Department and quash the same and direct the Respondents to repay Rs.56,525/- to the petitioner the amount which was recovered from his DCRG.

For Petitioner : Mr.R.Muthukannu

For Respondents : Mr.V.Vijay Shankar (for R1)
Mrs.M.E.Raniselvam (for R2)
Addl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the 1st Respondent dated 25.4.2005 issued in Pen.I/5/2005-06/7 and the order of the 2nd Respondent dated 5.3.2001 issued in G.O.Ms.No.38 (Education) Department and quash the same and direct the Respondents to repay Rs.56,525/- to the petitioner the amount which was recovered from his DCRG.

2. The facts in a nutshell are as under: The petitioner was appointed as a Secondary Grade Assistant with effect from 31.8.1972 and selection grade was awarded with effect from

31.8.1982 and he was promoted as Tamil Pandit with effect from 6.2.1987 and selection grade was awarded with effect from 31.8.1992.

3. It is stated that the Government vide G.O.Ms.No.210, P & AR Department, dated 11.3.1987, ordered that selection grade service of the lower post could be taken into account for awarding selection grade in the promotion post, provided they are in identical scale of pay. Based on the said government order, when a claim was made by the petitioner, taking into account the selection grade awarded in the cadre of Secondary Grade Assistant, benefit was granted to the petitioner.

4. It is averred that the petitioner reached the age of superannuation on 31.5.2004, but his pension proposal was returned by the first respondent on 8.4.2004 on the ground that the selection grade awarded to the petitioner for the post of Tamil Pandit on 31.8.1992 was not in order, as the petitioner is entitled to selection grade for the post of Tamil Pandit only with effect from 6.2.1997 as per G.O.Ms.No.38, Education Department, dated 5.3.2001. The first respondent directed revision of pay with effect from 31.8.1992 and ordered recovery from the DCRG of the petitioner. It is stated that Rs.56,525/- was withheld from the DCRG of the petitioner. Thereafter, it is stated that the petitioner made a representation to the first respondent to repay the amount withheld, but the said request was rejected by order dated 25.4.2005.

5. In this backdrop, the present writ petition is filed for the relief stated supra.

6. The learned counsel appearing on behalf of the petitioner vehemently contended that G.O.Ms.No.38, dated 5.3.2001 runs counter to the true intent and purpose of G.O.Ms.No.238, dated 26.6.1998 and, therefore, reliance ought not to have been placed on the said Government Order for ordering recovery of amount from the DCRG.

7. Secondly, it is contended by the learned counsel for the petitioner that it is nowhere the case of the respondent authorities that such excess amount of salary was fixed because of any misrepresentation or fraud played by the petitioner and, therefore, recovery being made for the mistake committed by the authorities is unjust and invalid.

8. Per contra, the learned counsel for the first respondent submitted that excess salary which has been paid to the petitioner is not in conformity with G.O.Ms.No.38, dated 5.3.2001 and, therefore, the recovery ordered is valid and warrants no interference. He added that the service rendered in Selection Grade Secondary Grade Assistant cannot be counted for

awarding Selection Grade in Tamil Pandit and the same is not in consonance with G.O.Ms.No.38, dated 5.3.2001.

9. I heard Mr.R.Muthukannu, learned counsel for the petitioner, Mr.V.Vijay Shankar, learned counsel for the 1st respondent and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the 2nd respondent and perused the documents available on record.

10. The facts in the case on hand are not in dispute. Therefore, it is not necessary to traverse through those facts once again. Let us directly analyse whether the recovery is justified or not.

11. In Col. B.J. Akkara (Retd.) -Vs- Govt. of India, reported in (2006) 11 SCC 709, the Hon'ble Supreme Court held that thus:

"27. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18; Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, Union of India v. M. Bhaskar, (1996) 4 SCC 416 and V. Gangaram v. Regional Jt. Director, (1997) 6 SCC 139):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had

knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them."

12. The Hon'ble Supreme Court in the case of Shyam Babu Verma v. Union of India, reported in (1994) 2 SCC 521 held that it shall only be just and proper not to recover any excess amount which has already been paid to the petitioners due to the fault of the respondents, where the petitioners being in no way responsible for the same.

13. Referring to various earlier decisions, including Col.B.J. Akkara (supra) and Shyam Babu Verma (supra), the Hon'ble Supreme Court in State of Punjab and others Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334, held as under:

"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, summaries 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."

14. In the case on hand, it is beyond any cavil that the excess payment was not on account of any misrepresentation or fraud played by the petitioner. Therefore, the recovery would definitely put the petitioner to undue hardship.

15. The grant of Selection Grade to the petitioner was disputed by the first respondent placing reliance on G.O.Ms.No.38, Education Department, dated 5.3.2001. It is to be noted at this juncture that the said Government order was challenged by few individuals by filing W.P.Nos.36752 and 36831 of 2006 (A.Devadas and another v. The Secretary to Government and others) and a learned Single Judge of this Court, by order dated 22.8.2012, quashed G.O.Ms.No.38, Education Department, dated 5.3.2001 and allowed the writ petitions. Therefore, as on date, the very basis for withholding the amount from DCRG does not exist and as such the consequential recovery is bad in law.

16. For the foregoing reasons:

(a) the writ petition is allowed and the orders of the 1st Respondent dated 25.4.2005 issued in Pen.I/5/2005-06/7 and the order of the 2nd Respondent dated 5.3.2001 issued in G.O.Ms.No.38 (Education) Department are set aside;

(b) the respondents are directed to refund the amount of Rs.56,525/- which was recovered from the DCRG of the petitioner within four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To:

1.The Assistant Accounts Officer,
Office of The Accountant General (A&E)
Chennai - 600 018.

2.The Secretary to the Government,
Government of Tamil Nadu,
Education (School) Department,
Fort St. George, Chennai - 600 009.

+lcc to Mr.V.Vijay Shankar, Advocate, S.R.No.66196

+lcc to the Government Pleader, S.R.No.66631

W.P.No.12572 of 2006

SSI (CO)

rrs 02/01/2019