

IN THE HIGH COURT JUDICATURE AT MADRAS

DATED : 15.02.2017

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.26423 of 2016 and
W.M.P.Nos.22636 and 31309 of 2016

R.Venkatachalam ... Petitioner
Vs

- 1.The State of Tamil Nadu
rep. by its Principal Secretary to Government,
Education Department, Fort St. George,
Chennai-9.
- 2.The Director of Treasury and Accounts,
2nd Floor, Panagal Buildings,
Saidapet, Chennai-15.
- 3.The Principal Accountant General (A&E),
Office of the Accountant General,
Teynampet, Chennai-18.
- 4.The District Treasury Officer,
Nagapattinam.
- 5.The Assistant Treasury Officer,
Mayiladuthurai.
- 6.The District Elementary Educational Officer,
Nagapattinam. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with both impugned orders passed by the 5th respondent in Na.Ka.No.508/2016/A3 dated 23.05.2016 and quash the same and direct the respondents to restore pension of the petitioner as fixed by the Assistant Elementary Officer, Myiladuthurai by an order dated 12.02.2010, by refunding the recovered amount to the petitioner.

For Petitioner : Mr.S.N.Ravichandran

For Respondents: Mr.P.Sanjai Gandhi,
Additional Government Pleader
for R1, 2 and 4 to 6
Mr.S.Balaji for R3

ORDER

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner in the affidavit filed in support of the writ petition would aver among other things that he is now aged about 77 years and he was appointed as a Higher Grade Teacher on 17.11.1964 and after completion of 10 years of satisfactory service, was given the benefit of Selection Grade increment on 17.11.1974 and on completion of 20 years of satisfactory service was accorded with the benefit of Selection Grade increment on 17.11.1984. The petitioner would further aver that he got his promotion as a Secondary Grade Headmaster on 22.12.1975 and on administrative ground, he was reverted from the post of Headmaster to Secondary Grade Assistant on 01.07.1976 and after completion of 32 years of unblemished record of service, was permitted to retire from service on 30.06.1996.

3. The petitioner would further aver that in compliance of the order dated 05.12.2007 made in W.P.No.43010/2006, the 1st respondent had issued G.O.Ms.No.202, School Education (G2) Department, dated 25.09.2008, the stipulation is to the eligibility and entitlement of the privilege of selection and special grade benefits to the teachers w.e.f. 01.06.1988, only in respect of revision of pay structure payable with effect from the date of their initial appointment in the cadre of Secondary Grade Headmaster. Therefore, in pursuance of the G.O.Ms.No.202 dated 25.09.2008 and subsequent G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 of the 1st respondent, the Assistant Elementary Educational Officer, Myiladuthurai, by an order dated 12.02.2010 revised and refixed the pension of the petitioner and all of a sudden, after a lapse of 6 years, vide impugned proceedings, the 5th respondent has ordered recovery of Rs.3,60,132/- in 28 instalments at Rs.13,000/- p.m. and last instalment of Rs.9,132/- and refixed his pension. Challenging the legality of the same, the present writ petition came to be filed.

4. Mr.S.N.Ravichandran, the learned Counsel appearing for the petitioner drawing the attention of this Court to the impugned order would submit that admittedly, before ordering recovery and re-fixation, the petitioner has not been put on notice and for that purpose, the matter has to be remanded. The learned Counsel would further submit that in the light of the ratio laid down in State of Punjab and Others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases 334, in which it has been held that in respect of pensioner, such a recovery cannot be ordered, therefore, prays for interference.

5. Per contra, Mr.P.Sanjai Gandhi, the learned Additional Government Pleader appearing for the respondents 1, 2 and 4 to 6 has invited the attention of this Court to the Counter Affidavit filed by the 5th respondent and would submit that the Inspection Cell of the Office of the Director of Treasuries and Accounts, Chennai has inspected the accounts of the 5th respondent and pointed out in the Inspection Report vide Rc.2616/2016 dated 25.02.2016 that the pension of the petitioner has been sanctioned irregularly at Rs.10650/- instead of Rs.8580/- and a sum of Rs.3,51,434/- paid in excess has to be recovered from the petitioner. Accordingly, the impugned order came to be passed. It is the further submission of the learned Additional Government Pleader that since the said excess amount is in nature of unjust enrichment at the hands of the petitioner, the 5th respondent is having every right to order for recovery and re-fixation of pension.

6. This Court bestowed its attention to the rival submissions and also perused the materials placed before him.

7. A perusal of the impugned order would clearly reveal that before ordering recovery and re-fixation, the petitioner has not been put on notice. The only natural consequence is to remand the matter once again to the file of the 5th respondent with a direction to offer reasonable opportunity to the petitioner to put forth his explanation with a further direction to pass appropriate orders in accordance with law. However, the Hon'ble Supreme Court of India in a decision reported in (2015) 4 Supreme Court Cases 334 cited supra, has summarized few situations wherein the recoveries are impermissible in law and it is relevant to extract paragraph 18 which reads 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 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.'

As per paragraph 18 of the decision cited above, recovery from retired employees or the employees who are due to retire within one year of the order of recovery, cannot be recovered.

8. Admittedly, the petitioner has attained the age of superannuation on 30.06.1996 and his pension was revised and re-fixed on 12.02.2010 in the form of impugned order dated 23.05.2016. Admittedly, the petitioner did not suppress any fact or committed any mistake on the part of the 5th respondent while revising and re-fixation of the pension benefits. In the light of the ratio laid down in the decision of the Supreme Court cited supra, this Court is of the considered view that the impugned order passed by the 5th respondent is liable to be quashed.

9. In the result, the Writ Petition is allowed and the impugned order passed by the 5th respondent in Na.Ka.No.508/2016/A3 dated 23.05.2016 is quashed with necessary orders that the 5th respondent has to pass appropriate orders

re-fixing the pension as well as repay the amount deducted to the petitioner, within a period of six weeks from the date of receipt of a copy of this Order and communicate the decision taken to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Education Department, Fort St. George,
Chennai-9.
- 2.The Director of Treasury and Accounts,
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Nagapattinam.

+1cc to Mr.S.Balaji, Advocate Sr.10032
+1cc to the Government Pleader Sr.10242

W.P.No.26423 of 2016

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