

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21-12-2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27459 of 2016
and
W.M.P.No.23649 of 2016

M.Thirugnanasambandam

.. Petitioner

vs

1.The State of TamilNadu,
Rep.by The Secretary,
School Education Department,
Secretariat, Chennai - 9.

2.The District Treasury Officer,
The District Treasury Office,
Thiruvarur, Nagapattinam District.

3.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the orders passed by her in her proceedings in Na.Ka.3948/2016/C dated nil.06.2016 and signed on 24.06.2016 and quash the same.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for M/s.M.Srividhya

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader

O R D E R

The order of the second respondent, issued in June 2016 and signed on 24.6.2016, is sought to be quashed in this writ petition.

2. The learned Senior Counsel, appearing on behalf of the writ petitioner, made a submission that the writ petitioner was

selected for appointment to the post of Secondary Grade Teacher by direct recruitment and joined in service on 1.4.1954. The Selection Grade of Pay was granted to the writ petitioner with effect from 2.10.1971 and the Special Grade of Pay was granted with effect from 2.10.1981. The writ petitioner attained the age of superannuation on 30.6.1989 and filed a writ petition in W.P.No.34927 of 2012, claiming the benefit of G.O.Ms.No.235, Finance (Pay Cell) Department, dated 1.6.2009. The said writ petition was allowed on 21.12.2012 and the benefit of the said G.O.Ms.No.235 was extended to the writ petitioner. However, the same was not implemented and the writ petitioner filed a contempt petition in Contempt Petition No.1117 of 2013 and thereafter, an amount of arrears of Rs.4,51,319/- from 1.1.2007 to 31.5.2016 was disbursed.

3. The writ petitioner claims that the amount was rightly paid in accordance with the Government Order and after a long battle of more than four years. While-so, suddenly an order of recovery was passed even without providing any opportunity to the writ petitioner and not issuing any show cause, the respondents have not filed any review or otherwise, seeking any clarification in respect of the order passed in W.P. No.34927 of 2012 in favour of the writ petitioner. Thus, the learned Senior Counsel for the writ petitioner urged this Court by stating that the amount was calculated and paid by the respondents and the writ petitioner is now aged about 86 years and therefore, the recovery of any amount from pension would affect his livelihood and he has to spend a large amount of money for taking medical treatments.

4. The learned Additional Government Pleader, appearing on behalf of the respondents, states that the revision of pay and pension was granted erroneously in favour of the writ petitioner and the excess payment alone is sought to be recovered. The authorities are at liberty to correct the errors, if any occurred on account of the wrong fixation or excess payment. In the case on hand, the calculation was erroneously made and an excess payment was disbursed to the writ petitioner. Thus, there is no irregularity in respect of the order of recovery passed by the respondents in this regard.

5. This Court is of the opinion that errors, if any, while undertaking the process of revision of pay or arrears, shall be corrected and the authorities are empowered to do so, on identification of errors or mistakes. However, the excess payment, if any, disbursed cannot be recovered from the retired Government employees. The calculation of revision of pay and arrears, was made by the respondents and their officials. While-so, the writ petitioner cannot be faulted with. The legal principles in this regard, are settled by the Hon'ble Supreme Court of India in the case of State of Punjab & Ors etc. Vs.

Rafiq Masih(White Washer) etc, reported in (2015) 4 SCC 334, in paragraph 18 of the judgment, the Hon'ble Supreme Court of India held that recovery from the retired employees or the employees who are due to retire within one year of the order of recovery is impermissible. However, in a subsequent judgment in the case of High Court of Punjab & Haryana Versus Jagdev Singh, reported in 2016(0) AIJ-SC 58951, the Hon'ble Supreme Court of India held as follows:

"10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc, (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

"(i) Recovery from employees belonging to Class - III and Class - IV service (for Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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." (emphasis supplied).

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

6. Thus, the legal principles in the matter of recovery has been settled by the Apex Court of India and the excess payment, if any, made on errors and calculation, alone cannot be recovered and in respect of the revision of pay, the same can be implemented in accord with the rules and the Government Orders. However, the subsequent Supreme Court judgment states that, if any, undertaking was obtained from the employees, at the time of

re-fixation or at the time of disbursing the arrears of pay, then the excess payment, if any, found can be recovered.

7. It is made clear that in respect of revision of pay and pension, the respondents are at liberty to do so in accordance with the Government orders. If any undertaking was obtained at the time of disbursement of payment of arrears, then also the respondents are free to recover the same. In this regard, the respondents are directed to pass orders, if necessary and, in accordance with law.

8. In this view of the matter, the order impugned in this writ petition is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.
- 2.The District Treasury Officer,
District Treasury Office,
Thiruvarur,
Nagapattinam District.
- 3.The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.

- + 1 cc to M/s.M.Srividhya Advocate,SR.91401
+ 1 cc to The Govt.Pleader, SR.92466

W.P.No.27459 of 2016

nr 25/01/2018