

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.35767 of 2016

WMP.No.30723 of 2016

V.Palani

.. Petitioner

vs.

- 1.The Government of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.
 - 2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai-600 006.
 - 3.The District Elementary Educational Officer,
Villupuram, Villupuram District.
 - 4.The Assistant Elementary Educational Officer,
Kandamangalam, Villupuram Taluk and District.
 - 5.The Treasury Officer,
Villupuram District Treasury, Villupuram.
- Respondents ..

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the fifth respondent proceedings in Na.Ka.No.4060/2016/E2 dated 06.07.2016 and the consequential proceedings in Na.Ka.No.4060/2016/E2 dated 18.07.2016 and quash the same, further directing the respondent to continuously paying the pension, as fixed originally by the sanctioning authority.

For Petitioner	:	Mr.V.S.Sivasundaram
For Respondents	:	Mr.P.Sanjai Gandhi, Additional Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner retired from service as Elementary School Headmaster on 30.06.1984 and he has been receiving pension through the office of the fifth respondent. However, to his shock and surprise, the fifth respondent has issued the impugned order dated 06.07.2016 calling upon him to repay the alleged excess amount paid to the tune of Rs.5,05,830/-, which has been arrived based on audit report and the fifth respondent has also issued a consequential order collecting/recovering the same in instalments and challenging the same, the petitioner has come forward with this writ petition.

3. The learned counsel appearing for the petitioner would submit that the matter is issue is squarely covered by a judgment of the Hon'ble Supreme Court of India in State of Punjab and Others v. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334] and prays for interference.

4. Per contra, Mr.P.Sanjai Gandhi, learned Additional Government Pleader, who accepts notice on behalf of the respondents, has drawn the attention of this Court to the impugned orders and would submit that since the amount has been paid in excess, it would also amount to unjust enrichment and therefore, the respondent is entitled to recover the same and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the entire materials available on record.

6. The Hon'ble Supreme Court of India in State of Punjab and Others v. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334] has considered the similar issue and it is relevant to extract para 18 of the said judgment:

"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 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.

Admittedly, the petitioner is in receipt of pension right from the year 1984 and nearly after 32 years, the impugned orders of recovery came to be passed on 06.07.2016 and 18.07.2016, without putting the petitioner on notice. The petitioner has not committed any fraud and he is not at fault as to the alleged payment of excess amount and in the light of the ratio laid down by the Hon'ble Apex Court in the above cited judgment, the impugned orders warrant interference.

7. In the result, this Writ Petition is allowed and the impugned orders of the fifth respondent in his proceedings in Na.Ka.No.4060/2016/E2 dated 06.07.2016 and the consequential proceedings in Na.Ka.No.4060/2016/E2 dated 18.07.2016 are set aside and the fifth respondent is directed to repay the amount recovered from the pension of the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Secretary to Government,
The Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai-600 009.

2.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai-600 006.

3.The District Elementary Educational Officer,
Villupuram, Villupuram District.

4.The Assistant Elementary Educational Officer,
Kandamangalam, Villupuram Taluk and District.

5.The Treasury Officer,
Villupuram District Treasury, Villupuram.

+1cc to Mr.V.S. Sivasundaram, Advocate, S.R.No.4541

+1cc to the Government Pleader, S.R.No.4915

cp (CO)

md(07/02/2017)

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