IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35605 of 2004
And
W.P.M.P.No.42886 of 2004

L.Munusamy ... Petitioner

Vs.

1.The Sub Treasury Officer,
Harur.

2.The Accountant General,
Chennai. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent, issued in the Ref No.Nil dated 1.10.2004 and quash the same and direct the respondents to pay full pension to the petitioner herein without any deduction.

For Petitioner : Mr.R.Muthukannu

For Respondents: Mr.K.Bhuvaneswari for R1
Mr.V.Vijay Shankar for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent, issued in the Ref No.Nil dated 01.10.2004 and to quash the same and direct the respondents to pay full pension to the petitioner herein without any deduction.

2.Heard the learned counsel appearing for the petitioner as well as the respective learned counsel appearing for the respondents.

3.The petitioner started his career as Higher Grade Teacher in the Panchayat Union School with effect from 1969. Thereafter, the petitioner was upgraded as Secondary Grade

Assistant. In the year 1970, he was posted as Middle School Headmaster and thereafter, with effect from 12.12.1972, he was again posted as Primary School Headmaster and he retired from service on reaching the age of superannuation on 30.06.1986.

4.As per the Government Orders, the petitioner was given selection grade with effect from 07.08.1980 and his pension was fixed treating him as Selection Grade Headmaster. Thereafter, from the entries in the passbook, the petitioner came to know that a sum of Rs.2030/- has been deducted from his pension. In this regard, the petitioner made a representation dated 23.08.2004 to the first respondent, for which, the second respondent informed the petitioner that audit objection was raised with regard to the award of selection grade in the post of Headmaster prior to 01.06.1988 and based on that a sum of Rs.2030/- was deducted from his pension every month. Hence, the petitioner has come forward with this writ petition.

5.Mr.R.Muthukannu, the learned counsel appearing for the petitioner would submit that without any notice and without conducting any enquiry, the recovery order has been passed and it is bad in law. He also relied upon the judgment of the Supreme Court reported in (2015) 4 SCC 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others) and prayed for allowing the writ petition.

6.Counter affidavit has been filed on behalf of the second respondent which is also adopted by the first respondent. In the counter it is stated that before 02.10.1970, the scale of pay for Secondary Grade Teacher, Headmaster Primary School and Headmaster Middle School were one and the same. Therefore, many senior Teachers were not willing to hold the Headmaster Middle School post. Accordingly, junior Secondary Grade Teachers held the post of Headmaster Middle School. Accordingly, junior persons receiving higher scale of pay is not permissible. The above pay anamoly was resolved by issuing clarificatory order vide G.O.1178 Education dated 22.12.1993, reiterating that the Headmasters as on 01.10.1970 who were reverted to lower post are entitled to protection of pay/ pay scale of Headmaster Middle School. In the case of the petitioner, who was a Middle School Headmaster as on 01.10.1970 and reverted to Headmaster Primary School post for lack of seniority also, the pay protection of Middle School Headmaster was granted but his post remained as Headmaster Primary School. Accordingly, based on the audit objection, the first respondent passed the impugned order.

7.The petitioner has filed this writ petition challenging the order dated 01.10.2004, wherein, based on the audit objections recovery was ordered. The impugned order and the passbook which is appended at page no.13 of the typed set of papers would reflect that without any notice and without conducting any enquiry, the first respondent has ordered recovery.

8.From the above facts, it is clear that it is not the fault of the petitioner and it is purely the mistake of the respondents. Hence, the petitioner cannot be held responsible for the mistake and even after such a long period from his retirement on 30.06.1986, deducting the amount behind his back based on audit objection is not permissible.

9.At this juncture, it is useful to extract hereunder the relevant portion of the decision of the Supreme Court reported in (2015) 4 SCC 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others):

> "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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or 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."

10.The decision cited supra squarely applies to the present case on hand. Accordingly, the writ petition is allowed and the impugned order passed by the first respondent dated 01.10.2004 is set aside. No Costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Sub Treasury Officer,
   Harur.

2. The Accountant General,
   Chennai.

+ 1 cc to Mr.V.Vijay Shankar, Advocate,SR.62362

+ 1 cc to The Govt.Pleader, SR.62883

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NR 18/09/2017