IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.37506 of 2003 and W.V.M.P.No.1817 of 2004
and W.P.M.P.No.45545 of 2003

M.Paramasivam ... Petitioner

Vs.

1. The Government of Tamil Nadu rep. by
   Its Secretary, Transport Department,
   Fort St., George, Chennai 600 009.

2. The General Manager,
   The Tamil Nadu State Transport Corporation,
   (Kumbakonam Div.I), Ltd., Kumbakonam 612 001.

3. The Assistant Manager,
   The Tamil Nadu State Transport Corporation,
   (Kumbakonam Div.I), Ltd.., Kumbakonam 612 001.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent issued in TNSTC/KD1/PEN/PEN2 dated 27.11.2002 and the consequential reply issued by the second respondent in TNSTC/Legal/S2/7/2003 dated 16.07.2003 and quash the same and consequently direct the respondents to restore the pension to the petitioner at the rate of Rs.2,483/0 including a communication of Rs.828/- instead of Rs.1,490/- with commutation of Rs.497/- and pay the same from September, 2002.

For Petitioner : Mrs.P.Mahalakshmi,
For Respondents : Mrs.K.Bhuvaneswari for R1,
Government Advocate.
Mrs.Rita Chandrasekar for R2

O R D E R

The petitioner is challenging the order of recovery passed by the third respondent/The Assistant Manager dated 27.11.2002.

2. The petitioner was initially appointed as Conductor. Thereafter, he was removed from the service. Thereafter, through settlement under Section 18(1) of the Industrial Disputes Act, 1947, he was reinstated as mazdoor and continued as mazdoor from 31.03.1982 onwards. After retirement, amount was settled, however, a sum of Rs.64,550/- was paid in excess. Hence, he was directed to pay the excess amount which was paid to him. Challenging the same, he has filed the present writ petition.

3. The learned counsel appearing for the petitioner relied upon the decision reported in 2017-1-Writ L.R. 321(Union of India, Rep. By the General Manager, Southern Railway, Park Town, Chennai and others Vs. The Registrar, Central Administrative Tribunal, Chennai and others), wherein the Division Bench of this Court has held as follows:

> "7. In the abovesaid context, as to why recovery should not be made from the above class of employees, it is worthwhile to extract the decisions considered by the Hon'ble Supreme Court in Rafiq Masih's case (cited supra).
>
>> 15. Examining a similar proposition, this Court in Col. B.J.Akkara v. Government of India, (2006)11 SCC 709, observed as under: "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."
>>
>> (emphasis is ours)

A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e.,Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. This Court in Syed Abdul Qadir v. State of Bihar (2009(3) SCC 475) held as follows:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter- affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

(emphasis is ours)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

17. Last of all, reference may be made to the decision in Sahib Ram Verma v. Union of India, (1995) Supp. 1 SCC 18, wherein it was concluded as under:

"4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M.Sc.,M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

(emphasis is ours)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science, the degree of M.Lib. Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post."

4. In view of the above, I am inclined to extend the relief in favour of the petitioner which was given in the decision cited supra, (after following the reported in State of Punjab Vs. Rafiq Masih (White Washer) etc., reported in (2015) 4 SCC 334). Accordingly, the writ petition is allowed and the impugned order of recovery is set aside. No Costs. Consequently, the connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

msvm

To

1. The Secretary, Transport Department,
   Fort St., George, Chennai 600 009.

2. The General Manager,
   The Tamil Nadu State Transport Corporation,
   (Kumbakonam Div.I), Ltd., Kumbakonam 612 001.

3. The Assistant Manager,
   The Tamil Nadu State Transport Corporation,
   (Kumbakonam Div.I), Ltd.., Kumbakonam 612 001.

+1 Cc to Ms. Jayesh B.Dolia, Advocate sr 66976.
+1 Cc to Ms.P. Mahalakshmi, Advocate sr 67631.
+1 CC to Govt. Pleader sr 68370.

W.P.No.37506 of 2003

RK(CO)
sp(23/10/2017)