



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.14898 of 2015

and

MP (MD) .NO:1 of 2015

A.Amutha

... Petitioner

-vs-

1.The Principal Accountant General
(A and E) Tamil Nadu,
Chennai-600 018.

2.The Additional Assisatnt Elementary Education Officer,
Illayankudi, Sivagangai District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ in the nature of Certiorarified Mandamus, calling for the records of the 2nd respondent's order in Na.Ka.No.452/AA/2014 dated 11.05.2015, quash the same and consequently direct the 1st respondent to refund the illegal deduction of Rs.1,72,011/- and sanction the revised pension with arrears to the petitioner.

For Petitioner : Mr.A.Haja Mohideen
For R1 : Mr.P.Gunasekaran
For R2 : Mr.S.Satish Kumar
Addl. Govt. Pleader

O R D E R

The petitioner has come forward with this writ petition, seeking to quash the impugned order dated 11.05.2015 passed by the 2nd respondent in Na.Ka.No.452/AA/2014, by which, the revision of salary of the petitioner stood cancelled and the excess amount paid was ordered to be recovered from her gratuity amount

2. The case of the petitioner is that her scale of pay was revised by the 2nd respondent in Na.Ka.No.345/A2/2013 dated 14.06.2013; that after her retirement, on submission of her pension proposal, the 1st respondent passed pension payment order by taking note of her last drawn pay as Rs.19600+4700 instead of Rs.21200+5400 without issuing any notice to her, pursuant to which, the 2nd respondent passed an order to recover Rs.1,72,011/- from her gratuity amount. Aggrieved by the same, the petitioner is before this Court with the relief stated supra.

<https://hcservices.ecourts.gov.in/hcservices/>

3. To consider the issue involved in this case, it is worthwhile to refer to the judgment of the Apex Court reported in **(2015) 4 Supreme Court Cases 334 [State of Punjab and others Vs.**

Rafiq Masih (White Washer) and others] wherein it has been held that the benefit of non-recovery cannot be extended to an employee, merely because, he was not accessory to mistake committed by the employer, or was not guilty of furnishing any factually incorrect information, or fraud or misrepresentation. In the above said decision, the Supreme Court has further stated 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 an 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or the 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."

4. However, in the subsequent judgment, the Hon'ble Supreme Court in the case of **High Court of Punjab vs. Jagdev Singh (Civil Appeal No. 3500 of 2006, dated 29.07.2016)** has held as follows:-

"7. The Respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8. The order of the High Court has been challenged in writ proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the



Respondent in these proceedings, this position has been specifically [1]admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. **While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.**

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. 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 (or Group 'C' and Group 'D' service).

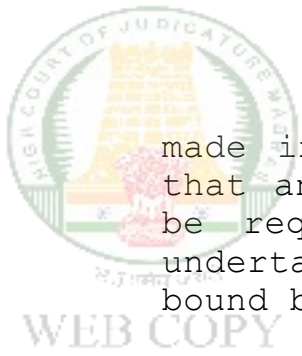
(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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." (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.''

5. In the above judgment, it has been categorically stated that when there is a mention of recovery at the time of revising the salary of an employee to the effect that any payment found to have been made in excess would be liable to be adjusted, then the employer can recover the amount. **Admittedly, in this case, while revising the salary of the petitioner on 14.06.2013 and granting the monetary benefit to the petitioner, the 2nd respondent has clearly mentioned that if the fixation of salary of the petitioner is found to be wrong in future, the same would be recovered from her in a single instalment.** Therefore, it is clear that the petitioner was put on notice of recovery, while issuing the order of revision of her salary as early as on 14.06.2013, as per the principle laid down by the Hon'ble Supreme Court and hence, this Court is not inclined to interfere with the impugned order of recovery dated 11.05.2015.

6. Accordingly, this Writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To:

1.The Principal Accountant General
(A and E) Tamil Nadu,
Chennai-600 018.

2.The Additional Assisatnt Elementary Education Officer,
Illayankudi, Sivagangai District.

+1 cc to MR.A.HAJA MOHIDEEN, ADVOCATE, SR NO:8732

+1 cc to MR.P.GUNA SEKARAN , ADVOCATE, SR NO:8596

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SVA/PN/10.03.2017/4P/5C