



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.02.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.1753 of 2017

and

W.M.P (MD) Nos.1451 and 1452 of 2017

S.K.Kannan

... Petitioner

vs.

- 1.The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009.
- 2.The Director of School Education
Office of Director of School education
Chennai 600 006.
- 3.The Chief Educational Officer
Virudhunagar District.
- 4.A.Namachivayam
The Assistant Elementary Educational Officer
Thirupparamkundram
Madurai District.
- 5.The Head Master
Government Higher Secondary School
Nadayaneri
Virudhunagar District

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of 4th respondent in Na.Ka.No.638/A1/2016 dated 03.11.2016 and impugned order of 3rd respondent in Na.Ka.No.8719/AA2/2016 dated 29.12.2016 signed on 03.01.2017, quash the same and consequently forbear the respondents herein from any manner initiating any action for recovery of incentive increment from the petitioner paid in accordance with law.

For Petitioner : Mr.K.Appadurai

For R1 to R3 & R5 : Mr.M.Rajarajan

Government Advocate

ORDER

<https://hcservices.courts.gov.in/hcservices/>
The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of 4th respondent in Na.Ka.No.638/A1/2016 dated 03.11.2016 and impugned order of 3rd respondent in Na.Ka.No.8719/AA2/2016 dated 29.12.2016 signed on 03.01.2017, quash



the same and consequently forbear the respondents herein from any manner initiating any action for recovery of incentive increment from the petitioner paid in accordance with law.

2. According to the petitioner, no opportunity was given before ordering impugned order of recovery and therefore, the same is liable to be set aside.

3. The learned Government Advocate appearing for the respondents submitted that in the order dated 22.04.2013 of the 4th respondent, granting incentive increment to the petitioner itself, there is a clause that in the event of audit objection, the petitioner has to remit the entire amount in one time payment and therefore, the impugned order is perfectly in order.

4. Heard both sides.

5. At this juncture, it is relevant to consider the judgment of the Hon'ble Apex Court in **High Court of Punjab vs. Jagdev Singh (Civil Appeal No.3500 of 2006, dated 29.07.2016)**, wherein, the Apex Court has held as follows:-

'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).

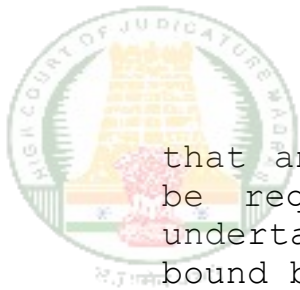
(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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.''

6. In the above judgment, it has been categorically stated that when an undertaking is given by an employee, the employer can recover the amount. It is not necessary that there should be a separate notice intimating recovery. As rightly pointed out by the respondents, the order granting incentive increment to the employee/petitioner on 22.04.2013, is very clear that in case of audit objection, the petitioner shall pay the entire amount, which has been accepted and acknowledged by the petitioner. Getting a separate undertaking is only a formality. When the order granting incentive increment contains such a clause, that would suffice to order recovery and that there is no need for separate hearing. Therefore, the impugned order of recovery cannot be found fault with. Hence, this Court is not inclined to grant the relief sought for. Accordingly, this writ petition is dismissed. No costs. Consequently, W.M.P (MD) Nos. 1451 and 1452 of 2017 are closed.

Sd/-

Assistant Registrar (Records)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary to Government
School Education Department
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4. The Head Master
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Virudhunagar District.

+1cc to M/S. THE SPECIAL GOVERNMENT PLEADER, SR NO: 6005

+1 cc to MR. K. Appadurai, ADVOCATE, SR NO: 5623