



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.(MD) No.7220 of 2013 &
M.P.(MD).No. 2 of 2013

R.Ramasamy

... Petitioner

Vs.

1. The Principal Accountant General (A&E),
Office of the Principal Accountant General (A & E),
361, Annasalai, Chennai-18.
2. The Sub Treasury Officer,
Tenkasi, Tirunelveli District.
3. The Principal Subordinate Judge,
Tenkasi, Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records relating to impugned proceedings in No.Pr AG(A&E) PEN P02/10209114/5/R0209114/493, dated 20.12.2012 of the 1st respondent herein and quash the same.

For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.P.Gunasekaran for R1
Mr.V.Muruganantham for R2
Additional Government Pleader
Mr.T.S.Mohamed Mohideen for R3

O R D E R

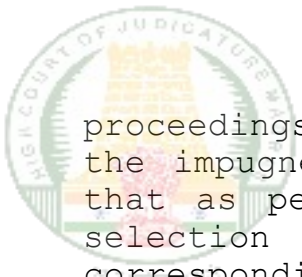
[Order of the Court was made by T.S.SIVAGNANAM,J]

Heard Mr.T.Pon Ramkumar, learned counsel for the petitioner, Mr.P.Gunasekaran, learned counsel for the first respondent, Mr.V.Muruganantham, learned Additional Government Pleader for the second respondent and Mr.T.S.Mohamed Mohideen learned counsel for the third respondent.

2. By consent the writ petition itself is taken up for final disposal.

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

3. The petitioner, who is a retired employee in the third respondent Court, has filed this writ petition challenging the



proceedings issued by the first respondent. The first respondent in the impugned proceedings by virtue of an written note has pointed that as per G.O.Ms.No.672, the pre-revised time scale of pay for selection grade Junior Bailiff is Rs.3200-85-4900 and the corresponding Grade pay is Rs.2000/- only and advised the petitioner's employer to revise and correct the same and the excess may be recovered.

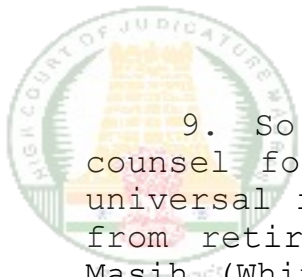
4. The petitioner case is that the note put up by the first respondent in the impugned proceedings is contrary to the factual position as the Grade Pay for the said post is Rs.2400/-, which has been accepted by the first respondent in the case of another employer vide his order, dated 11.01.2012 referring to the same Government Order in G.O.Ms.No.162 has stated that the Grade Pay is Rs.2400/-.

5. Two issues arise for consideration in this case. The first being whether the direction given in the impugned order could have been issued to the employer of the writ petitioner after the writ petitioner had retired from service. The second issue is that what would be the correct Grade Pay for the post held by the writ petitioner.

6. With regard to the first aspect, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of **State of Punjab & Ors V. Rafiz Masih (whit Washer) etc.**, reported in **CJ 2014 SC 1054**. By relying on the said decision, it is submitted that recovery from retired employee cannot be made after retirement and if at all there is any error, it should have been corrected well before the retirement. In the instant case, the petitioner has not suppressed any material facts and it is the High Court which had revised the pay scale and fixed the appropriate Grade Pay and implemented the Government Order in G.O.Ms.No.672 Home (Courts-V) Department, dated 22.07.2010 and granted the revised pay with effect from 01.04.2003. Therefore, it is submitted that when no error has been committed by the petitioner, no recovery should be made.

7. The second aspect is that what would be the Grade Pay. The learned Additional Government Pleader, referred to the schedule appended to the Government Order in G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, and pointed out that for the existing scale of pay Rs.4000-100-6000 revised scale of pay is Rs.5200-20200 in PB1 and the Grade Pay is Rs.2400.

8. We *prima facie* find that in terms of G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, the Grade Pay is Rs.2400/-. That apart, the Grade Pay for another employee also working in the same Tirunelveli Judicial Unit, the first respondent has stated that the Grade Pay is 2400/-. Therefore, we satisfied that the observation made in the impugned order by the officer of the first respondent is not tenable.



9. So far as the recovery aspect is concerned, the learned counsel for the first respondent pointed out that as it is not a universal rule that in all cases where that recovery cannot be made from retired employee. Further, it is pointed out that in Rafiq Masih (White Washer) case (cited supra), the Hon'ble Supreme Court accepted the contentions of the management, and held that recovery can be effected, if there is wrong payment has been made.

10. The learned counsel for the first respondent is fully right in stating that there cannot be any universal rule with regard to recovery of excess pay. The facts of each case has to be considered to ascertain as to whether the authorities were justified in effecting recovery. In the instant case, the revised scale of pay was granted to the petitioner in the year 2008, pursuant to the proceedings of the Registrar General of this Court and he has been receiving the said pay all along till his retirement on attaining the age of superannuation on 31.10.2012. The petitioner's pension has also been fixed. In such circumstances, it would be too late in the day for the first respondent to now point out that the Grade Pay is not properly fixed. Furthermore, if there is no misrepresentation made by the petitioner and it is the petitioner's employer who fixed the proper scale of pay and granted the benefits and thus, considering the facts and circumstances of the case, we hold that no recovery can be effected from the petitioner's pension based on the impugned order of the first respondent. Therefore, the writ petition is allowed to the extent indicated above. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Accountant General (A&E),
Office of the Principal Accountant General (A & E),
361, Annasalai, Chennai-18.
 2. The Sub Treasury Officer,
Tenkasi, Tirunelveli District.
 3. The Principal Subordinate Judge,
Tenkasi, Tirunelveli District.
- + 1 CC TO Mr.T.PON RAMKUMAR, ADVOCATE IN SR No. 16720
+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 17014
+ 1 CC TO Mr.T.S.MOHAMED MOHIDEEN, ADVOCATE IN SR No. 16744

JIKR

TE/SKN-RSK : 10/04/2017 : 3P/7C