



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.8164 of 2013
and M.P. (MD) No.1 of 2013

S.Rathinam

... Petitioner

Vs.

- 1.The Director,
The Directorate of High School,
Chennai - 6.
- 2.The Chief Educational Officer,
Department of School Education,
Pudukottai.
- 3.The Account Officer (Audit),
Department of Audit,
Madurai.
- 4.The Head Master,
Government High School,
Maangadu, Alangudi Taluk,
Pudukottai - 622 304.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order of the 4th respondent in Na.Ka.No.105/10 dated 12.11.2010 and quash the same, and direct the 1st and 2nd respondents to grant 6th Pay Commission benefits in the pension to the petitioner by fixing a time frame.

For Petitioner

:Mr.R.Ramasamy

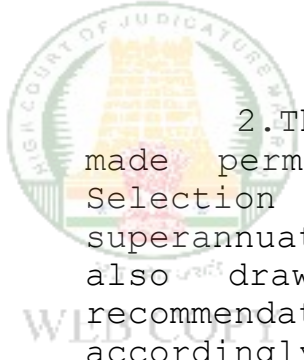
For Respondents

:Mr.V.Muruganantham

Additional Government Pleader

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order of the 4th respondent in Na.Ka.No.105/10 dated 12.11.2010 and quash the same, and direct the 1st and 2nd respondents to grant 6th Pay Commission benefits in the pension to the petitioner within the time to be fixed by this Court.



2. The petitioner was working as Art Teacher and he has been made permanent on 01.06.1981. Subsequently, he was granted Selection Grade in the year 1991. On attaining the age of superannuation, he retired from service on 31.05.1997 and he is also drawing pension. While so, the 6th Pay Commission recommendations have been implemented from 01.01.2006 and accordingly, his pension benefits had to be revised by the respondents and revised pensionary benefits in accordance with the 6th Pay Commission has to be paid to the petitioner. Therefore, the petitioner had approached the respondents to revise his pension in accordance with 6th Pay Commission recommendations and accordingly pay pensionary benefits to the petitioner. In response to the said request, the 4th respondent has passed the present impugned order dated 12.11.2010, whereby the 4th respondent has stated that during the service of the petitioner, he was conferred Selection Grade and the date on which such conferment made was found to be wrong subsequently. Therefore, based on conferment of Selection Grade salary has been paid to the petitioner and unless the said amount paid to the petitioner is recovered from him, further benefit of extending the pensionary benefits in accordance with the 6th Pay Commission recommendations cannot be paid. Therefore, the fourth respondent has stated in the impugned order that unless the said excess amount having been paid to the petitioner wrongly by taking into account Selection Grade conferred on him is paid back by the petitioner to the respondents, the request of the petitioner, seeking the pensionary benefits by revising his pay in accordance with the 6th Pay Commission recommendations cannot be considered and therefore the same was rejected. Challenging the same, the petitioner has come out with the present writ petition.

3. Heard both sides.

4. The issue raised in the writ petition is in very narrow campus as the reasons adduced by the fourth respondent in the impugned order cannot be sustainable one since the issue raised in this writ petition has already been concluded in an authoritative pronouncement of the Hon'ble Apex Court reported in **[(2015) 4 Supreme Court Cases 334]**, in the matter of State of **Punjab v. Rafiq Mashri**, where Their Lordships have given five situations, under which recovery cannot be made by the employer. Their Lordships at paragraph 18 have stated the five situations. Therefore, paragraph 18 of the said judgment can be usefully referred hereunder:

"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 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

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

(iii) Recovery from the 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) If 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."

5. The case of the petitioner squarely falls under Clause (ii) of paragraph 18, where it is stated that no recovery can be made from the retired employees, or the employees, who are due to retire within one year, of the order of recovery. Since the petitioner admittedly has retired from service on 31.05.1997, the present recovery is impermissible and if that is the only reason for refusal to consider the request for revision of his pensionary benefits in accordance with the recommendations of the 6th Pay Commission, it is no more a valid reason and accordingly, the impugned order is liable to be set aside.

6. In view of the same, the impugned order is set aside and the writ petition is allowed with a direction to the respondents to consider the request of the petitioner for revision of his pension in accordance with the recommendations made by the 6th Pay Commission and after considering the same the revised pensionary benefits can be calculated and the difference amount after such calculation shall be paid to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



sj
To

1.The Director,
The Directorate of High School,
Chennai - 6.

2.The Chief Educational Officer,
Department of School Education,
Pudukottai.

3.The Account Officer (Audit),
Department of Audit,
Madurai.

4.The Head Master,
Government High School,
Maangadu, Alangudi Taluk,
Pudukottai - 622 304.

+1CC to Spl.Government Pleader Sr.No.6393

GJM/SV/MMS/17.2.17-4p-6c

**W.P. (MD) No.8164 of 2013
and M.P. (MD) No.1 of 2013
03.02.2017**