

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.12.2018

CORAM:
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.16059 of 2011

N.Usha Mani

..Petitioner

Vs

1.The Accountant General
(Accounts & Entitlement)
O/o.The Accountant General (A &I)
Tamil Nadu, No.361, Anna Salai
Chennai-600 018

2.The Director of School Education
College Road
Chennai-600 006

3.The District Educational Officer
Dharmapuri

..Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Mandamus forbearing the respondents from reducing the scale of pay payable to the petitioner by one increment from 25.03.2003 till the date of retirement i.e., 31.05.2007 and consequent fixation of pension and other benefits and consequently direct the respondents to sanction full pension and other benefits on the basis of scale of pay last drawn by the Petitioner on his retirement with arrears with interest and pass such further orders.

For Petitioner : Mr.S.Neduncheziyan

For Respondents : Mr.V.Vijayashankar for R1
Mr.K.Karthikeyan,
Government Advocate
for R2 and R3.

ORDER

The Prayer in the Writ Petition is to issue a writ of Mandamus forbearing the respondents from reducing the scale of pay payable to the petitioner by one increment from 25.03.2003 till the date of retirement i.e., 31.05.2007 and consequent fixation of pension and other benefits and consequently direct the respondents to sanction full pension and other benefits on the basis of scale of pay last drawn by the Petitioner on his retirement with arrears and interest.

2. The Petitioner Usha Mani was appointed as B.T.Assistant in the year 1970. She was promoted as Supervisor of SSA Scheme which is equivalent to the post of Headmaster of High School on seniority as per the proceedings of the Director of School Education, Chennai issued in Na.Ka.No.54900/C4/2002; dated 15.06.2002 and she joined the post of Supervisor. She was further promoted to the post of Head Master of Higher Secondary School vide Proceedings Rc.No.13809/W1/06 (2): dated 12.08.2006 of the Director of School Education, Chennai, and she joined in the post on 15.11.2006 F.N. and by proceedings dated 05.03.2007 her scale of pay was fixed in the promoted post by sanctioning one increment. Though the proposals have been forwarded by the School Education Department to the office of the first respondent, the first respondent has cancelled one increment paid to the petitioner on promotion to the post of Headmaster from the year 2006 and accordingly revised the pension proposal and reduced it and granted only a lesser pension to the petitioner. The first respondent has passed the proceedings dated 05.06.2007 revising the pay scale of the petitioner by cancelling one increment from the year 2006 and accordingly they have calculated the pension payable to the petitioner as Rs.9,957/- with effect from 01.06.2007 and further ordered for recovery of the increment already paid to the petitioner, till the date of superannuation.

3. According to the Petitioner, she has made several representation to the authorities concerned seeking to revise the pension as per the scale of pay drawn by her on her retirement.

4. The learned counsel for the first respondent submits that the post of PG Assistant and High School Head Master have the identical scale of pay Rs.6500-200-10500 and the individual had been posted to the post of High School Headmaster on 17.6.2002 which is only a transfer, and therefore, the first respondent has disallowed one increment benefit on 17.06.2002 based on the second respondent-Director of School Education letter dated 28.08.2004.

5. According to the Petitioner, she has not received any communication from the first respondent in respect of revised scale of pay by restoring to the original scale of pay. However, in the Service Book of the Petitioner, corrections have been carried out and she was not informed of the same. Thus, according to the Petitioner, the 1st respondent has violated the principles of natural justice.

6. The learned counsel for the 1st respondent would submit that pay fixation of Post Graduate Teachers appointed on transfer as Headmaster, High School cannot be carried out in

terms of Fundamental Rules and hence the claim of the Petitioner for one increment benefit on 17.06.2002 on her transfer as High School Head Master cannot be acceded to.

7. The learned Government Advocate appearing for the respondents 2 and 3 also reiterated the stand taken by the 1st respondent by stating that the Petitioner is not entitled for one increment under the Government Orders.

8. Considering the submissions made on either side, it is apparent that the Petitioner was sanctioned one increment while she was promoted as PG Assistant on 30.12.2000 and posted as Supervisor of SSA Scheme equivalent to High School Head Master on 17.06.2002. Further Promoted as Higher Secondary School Head Master on 15.11.2006 and retired on superannuation on 31.5.2007. As the post of PG Assistant and High School Head Master have the identical scale of pay Rs.6500-200-10500 and the individual had been posted to the post of High School Headmaster on 17.6.2002 which is only a transfer, the first respondent disallowed one increment benefit on 17.6.2002 and accordingly granted lesser pension to the Petitioner.

9. The learned counsel for the Petitioner in support of his submissions that after retirement, the first respondent cannot recover the amount from the Petitioner, relied on decision of the Supreme Court reported in (2015) 4 SCC 334 [State of Punjab v. Rafiq Masih] : 2014 SCC OnLine SC 1027, wherein, in paragraphs 11 and 12, it is held as under:-

" 11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to the employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , wherein this Court recorded the following observation in para 58: (SCC p. 491)

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the

matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] , V. Gangaram v. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , B.J. Akkara v. Govt. of India [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] , Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] ."

(emphasis supplied)

10. The Apex Court also 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) 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.

Admittedly, the case on hand comes under clause (ii) of the above stated situation. Further, it is apparent that no proceedings have been passed by the respondents for the revised scale of pay fixed in favour of the Petitioner. Hence, it is open to the respondents to follow due procedure to revise the pay as well as pension, as contemplated under the Rules. It is also open to the Petitioner to make a representation to the respondents to reconsider the revised entries made in the Service Register. On receipt of such representation, the respondents shall consider and pass appropriate orders, within 12 weeks from the date of receipt of a copy of this order.

11. In the result, the Writ Petition is disposed of with the above observation. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Accountant General
(Accounts & Entitlement)
O/o.The Accountant General (A &I)
Tamil Nadu, No.361, Anna Salai
Chennai-600 018

2.The Director of School Education
College Road
Chennai-600 006

3.The District Educational Officer
Dharmapuri

+1cc to Mr.G.Sankaran, Advocate, S.R.No.89220

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.89233

+1cc to the Government Pleader, S.R.No.89439

WP.No.16059 of 2011

rrs 05/02/2019

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