

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

W.P.No.18410 of 2004

K.Chinnasamy

...Petitioner

- Vs -

1. The District Elementary Educational Officer,
Villupuram District.
2. The Assistant Elementary Educational Officer,
Thyagaduruvam,
Villupuram District.
3. The Sub Treasury Officer,
Kallakurichi, Villupuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to calling for records on the file of the third respondent in connection with the order passed by him in ref.No.Na.Ka. /2003 dated 26.6.2003 and quash the same; and pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances arising out this case in respect of the writ petition and thus render justice.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.D.Venkatachalam,
Addl. Govt. Pleader for Education

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O R D E R

The prayer sought for in this writ petition is a Writ of Certiorari calling for records on the file of the third respondent in connection with the order passed in Ref.No.Na.Ka. /2003 dated 26.06.2003 and quash the same.

2. The facts which are required to be noticed for the disposal of this writ petition are as follows:

The petitioner joined as a Higher Grade Teacher on 01.02.1945 and worked up to 14.09.1955 in the Higher Grade Post and thereafter, was promoted as Secondary Grade Teacher from 15.09.1955. On 10.11.1956, he was posted as Middle School Headmaster and worked till 30.09.1973. While, he was attaining superannuation on 31.1.1981, he was holding the post of Head Master of Elementary School (Special Grade). After the date of superannuation, he was given re-employment and allowed to continue till 31.05.1981.

2.2. After his retirement his pensionary benefits was fixed and was disbursed and he was continuing to receive the pension. While so, by order dated 26.06.2003, the third respondent has stated that the pay fixed for the petitioner in the pay-scale of Rs.8000-275-13500 from 01.04.1999 was wrong and since the petitioner superannuated on 31.01.1981, the revised pay scale for Special Grade Headmaster as per the Government letter dated 18.09.2000, Finance Department and also as per G.O.Ms.No.1381, Education Department, dated 05.10.90, the said fixation was wrong, therefore, a sum of Rs.65,324/- which was excessively paid to him from 01.04.1999 to 30.11.2002 since was excess payment, has to be recovered from him. Therefore, the petitioner was directed to remit the said amount. Challenging the same, the present writ petition has been filed.

3. Heard Mr.G.Sankaran, learned counsel for the petitioner as well as Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondents.

4. Mr.D.Venkatachalam, learned Additional Government Pleader appearing for respondents would submit that, since there had been an excess payment, by way of pension on the basis of the wrong fixation of the pay for the petitioner and the same was found by the audit and it was brought to the notice of the third respondent, the said impugned order was passed directing the petitioner to remit the said amount of Rs.65,324/- which was paid excessively from 01.04.1999 to 30.11.2002. Therefore, the said order cannot be assailed by the petitioner as admittedly, he has received excess amount, he is liable to remit the same to the Government.

5. I have considered the said submissions by the learned Additional Government Pleader and also have perused the materials placed before this Court.

6. First of all, the petitioner retired on superannuation as early as on 31.01.1981 after having served for long years. Thereafter, based on the pay fixed to him from time to time, his pension papers were cleared and the petitioner

started getting the pension regularly. After 22 years, from the date of superannuation, now the impugned order has been passed that too without any notice to the petitioner stating that, a sum of Rs.65,324/- by way of pension had been excessively paid to the petitioner for the period from 01.04.1999 to 30.11.2002.

7. The law is well settled in this regard as enunciated by the Hon'ble Supreme Court in Ajay Kumar Choudhary vs. Union of India (Civil Appeal.No.1912 of 2015) that, even an excess payment has been made and once the Government servant retired from service, recovery cannot be made from retired persons out of their pensionary benefits.

8. By virtue of law having been declared by the Hon'ble Apex Court, the recovery sought to be made from the petitioner for the alleged excess payment between 1999 to 2002 cannot be made. Moreover, before passing the impugned order, admittedly, no notice had been given and therefore, the impugned order is also in violation of the Principles of natural justice.

9. For all these reasons, the impugned order would not stand in the legal sanctity as the same would be totally unjustifiable and unsustainable. Accordingly, it is liable to be quashed.

10. In the result, the impugned order is quashed and the writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition if any is closed.

smi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

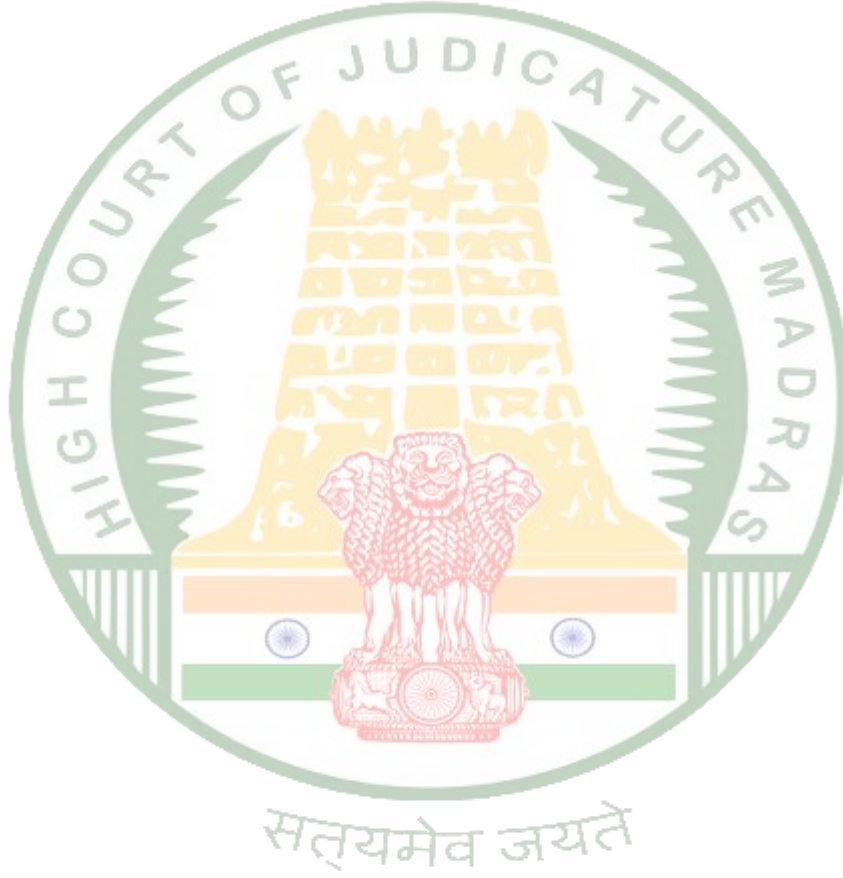
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+1CC To The Govt Pleader, SR.NO.76513

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