

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9992 of 2013

1. K.Selvaraj

2. B.Bathavatchalam

.. Petitioner

vs

1. The Director,
Tamil Nadu Fire & Rescue Service Department,
Egmore, Chennai - 8.

2. The Divisional Officer,
Tamil Nadu Fire & Rescue Service Department,
Villupuram Divison,
Villupuram.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, Calling for the records relating to the second respondent herein refixing the pay scales of the petitioners in R.C.No.10247/B1/ 2009 dated 5.10.2009 and the consequential order of recovery in R.C No.10247/A1/09 dated 10.12.2009 and the order rejecting the petitioner representation in O.Mu.No. 13049/B1/12 dated 26.11.2012 and quash the same in so far as the petitioners are concerned and consequently direct the second respondent herein to reimburse the recovered amount and refix the pay scales by conferring one increment in the promotion post of Leading Fireman with effect from 1.1.06 and confer all the benefits with due regards to the petitioners seniority.

For Petitioner : Mr.K.H.Ravi Kumar
for M/S.R.S.Anandan

For Respondents : Mrs.Jayanthi
Special Government Pleader

O R D E R

The order of recovery issued in proceedings dated 26.11.2012 is under challenge in this writ petition.

2. The writ petitioner was appointed as Fireman on 15.02.1982, he was further promoted to the post of leading fireman on 01.07.2007. The grievance of the writ petitioner is that the selection grade scale of pay in the post of fireman granted during the year 1992 and the special grade scale of pay granted in the year 2002 are sought to be recovered by the second respondent through proceedings dated 05.10.2009 based on the audit objections. The Audit party raised an objection in respect of the payment of excess pay disbursed to the writ petitioner. Accordingly, orders were passed by the second respondent to recover the excess payment of Rs. 24,246/- and Rs.32,369/- from the writ petitioner.

3. The petitioner states that he is entitled for selection grade and special grade and there was no infirmity in sanctioning the selection grade scale of pay in favour of the writ petitioner.

4. This Court is of an opinion that the excess payment if any granted cannot be recovered from the retired employees is the principles laid down by the Apex Court of India in the case of State of Punjab & Ors etc. vs. Rafiq Masih (arising out of SLP (C) No.11684 of 2012). However, in case of any undertaking by the employees at the time of effecting revision of pay, then the competent authorities are empowered to recover the same. The purpose of the undertaking is to ensure that the excess payment if any found during the audit objections are to be recovered.

In the present case, the learned Special Government Pleader submitted the copy of the undertaking given by the writ petitioners. Both the writ petitioners Mr.K.Selvaraj & Mr.B.Bathavatchalam, submitted the form for exercising option under the Tamil Nadu revised scale of pay rules 2009 and the undertaking given by them are extracted hereunder:

" I, K.Selvaraj holding the post of leading fireman, 5486 in the scale of Rs.3200-85-3900 do hereby elect* to come under the revised scale of pay before / after earning increment in the existing scale of pay with effect from 1st January, 2006 / to retain the existing scale of pay and rate of dearness allowance for the period up to 31.12.2005 and come under the revised scale with effect from 01.01.2006.

2. The option hereby exercised is final and will not be modified at any subsequent date.

3. I hereby also undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment

against future payments due to me or otherwise without insisting for any prior notice.
Dated: 16.06.2009".

6. The Hon'ble Supreme Court in the case of High Court of Punjab and Haryana vs. Jagdev Singh, 2016 (14) SCC 267 and it is relevant to extract Paragraph Nos.10 & 11:

10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etcl. 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.

The Hon'ble Supreme Court of India held that incase of any undertaking given by the employee, then the employer is entitled to recover the excess payment, if any made to the employees. In view of the legal principles settled by the Apex Court of India cited supra. The writ petitioners are not made out any valid ground for the purpose of considering the grounds raised in the present writ petition. However, it is made clear that the excess

amount now demanded has to be recovered in 10 equal installments from the petitioner.

4. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Director,
Tamil Nadu Fire & Rescue Service Department,
Egmore, Chennai - 8.
2. The Divisional Officer,
Tamil Nadu Fire & Rescue Service Department,
Villupuram Divison,
Villupuram.

+1cc to Mr.R.S.Anandan, Advocate, S.R.No.74617

+1cc to the Government Pleader, S.R.No.75874

W.P.No.9992 of 2013

RK(CO)
GSP(27/11/2018)

सत्यमेव जयते

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