IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.31610 of 2003
& Connected M.Ps.

Mrs.I.Ponmudi ...Petitioner

-Vs-

1. The State of Tamil Nadu
rep. By the Commissioner of Treasuries
Panagal Building,
Saidapet,
Chennai 600 015.

2.The Assistant Treasury Officer,
Sub Treasury, Katpadi.

3.The Correspondent,
De Valois Higher Secondary School,
Kasam, Katpadi 632 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent relating to the third respondent's order dated 16.10.2003 and quash the said order and consequently direct the respondents to pay the petitioner the arrears of salary for the month of February 2003 and for the period from May 2003 onwards together with interest.

For Petitioner : Mr.Sundaranarayanan

For Res.1 & 2 : Mr.G.B.Rajesh

For Respondent-3: No Appearance

O R D E R

The prayer sought for in this writ petition is for a writ of Certiorarified Mandamus calling for the records of the third respondent relating to the third respondent's order dated 16.10.2003 and quash the said order and consequently, direct the respondents to pay the petitioner, the arrears of salary for the month of February 2003 and for the period from May 2003 onwards, together with interest.

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

(i) The petitioner was working as teacher at the third respondent school and was regularly getting salary. While so, for the month of February 2003, her salary bill was due, but the same was not paid due to the settlement of Income Tax return for the year ending 31.03.2003. However, before that issue was resolved, the respondent paid the salary for the month of March and April 2003. Subsequently, it seems to have been noticed by the respondents that, without settling the Income Tax claims during the February 2003 as normally Tax Deducted at Source would be made in the entry register on paying tax for the year ending 31.03.2003 in February salary itself, that would be normally paid in the month of March. In this regard, since, according to the respondent, the petitioner had been paid the salary for the month of March and April 2003 without settling the alleged Income tax due, which otherwise ought to have been settled in the month of February 2003, directed the third respondent, to recover the salary paid to the petitioner, for the month of March and April 2003 and accordingly, pursuant to the said directive, the third respondent has issued the impugned proceedings dated 16.10.2003, thereby, directed the petitioner to pay back the salary, which she received for the month of March and April 2003. Aggrieved over the said order of recovery, sought to be made on behalf of the official respondents, by third respondent, the petitioner has filed this writ petition with the aforesaid prayer.

3. I have heard Mr.Sundaranarayanan, learned counsel for the petitioner, who would submit that, the petitioner is not at all liable to pay any Income tax, as she has completely settled the Income Tax due for the year 2003 however, wrongly her salary for the month of February2003 was not paid and when she raised that issue before the treasury officer for payment of February 2003 salary without settling that issue, subsequent months salary alone had been released i.e., for the March and April month 2003. Learned counsel would further submit that, thereafter also till the petitioner reaches superannuation, every month salary has been paid to the petitioner, without any hindrance and the petitioner was permitted to retire peacefully,

accordingly, she retired from service. If at all, the petitioner is due to pay any Income Tax, that should be verified only by asking the petitioner to file the returns and when once the returns is filed and if it is accepted by the Income Tax Authorities and thereby any payment or deductions does not arise and therefore, the amount already paid to the petitioner for the month of March and April 2003 shall not be deducted/recovered. Therefore, the impugned order was not sustainable.

4. However, the learned counsel for the respondent would submit that, for the year ending 31.03.2003, the entire Income Tax due i.e., the Tax deducted at Source (TDS) can be made from and out of the salary upto February 2003. Since, the said salary for February month would be normally paid in the month of March alone, the entire due payable for any salaried person could be deducted by the employer and only thereafter, the salary for the month of March 2003 would be released in April.

5. Learned Government Advocate by relying upon the counter affidavit filed by the respondent that, since the Income tax due has not been settled for the year ending 31.03.2003 by the petitioner from and out of the salary payable by February 2003, since the salary for the month of March and April had been wrongly paid to her, the official respondents had given a direction to the third respondent, to recover the said sum in order to settle the Income Tax due payable by the petitioner.

6. Therefore, only pursuant to the said directive issued by the official respondents, the third respondent has passed the impugned order dated 16.10.2003 whereby, it was directed that the petitioner shall reimburse the said salary paid to her for the month of March and April 2003 in order to settle that Income Tax due payable by her. Therefore, absolutely, there was no infirmity in the said orders hence, it has to be sustained.

7. I have heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2. However, no one is appearing for the third respondent school.

8. In so far as the claim of the official respondents that the petitioner kept any due of Income Tax for the year ending 31.03.2003 and for the said purpose, the Income Tax due ought to have been recovered from the petitioner's salary payable to her till the year ending 31.03.2003 by way of TDS. Since the said TDS is not so made wrongly and subsequently, the salary for the month of March and April 2003 had been paid, the

official respondents had no other option except to recover the said Income Tax due by way of recovery from the salary wrongly paid to the petitioner, for the month of March and April 2003.

9. Assuming that the petitioner had to pay Income Tax for the year ending 31.03.2003 and the same had not been settled by way of TDS by the employer within the salary payable for the month of February 2003, the said sum could have been made by deducting in subsequent months and ultimately, if the TDS could not be completed, the same could have been repaid to the Income Tax Department also with the communication to the petitioner, to file the returns to show that, she is liable to pay the Income Tax. In this case, it is the claim of the petitioner that the petitioner is not at all having any due of income tax payable for the year ending 31.03.2003, the petitioner also claims that her February 2003 salary has been wrongly withheld till date and it has not been released.

10. As has been stated above, if at all the petitioner is having any due of Income Tax for the year ending 31.03.2003, the same can very well be directed to be paid by the petitioner, by giving the communication as per the procedure of Income Tax Act and if at all, the petitioner has not paid the same, the petitioner has to face the punitive action and other proceedings available under the said Act.

11. Further, if it is the case of the petitioner that, she has paid the entire Income Tax due and therefore, there had been no due of Income Tax for the year ending 31.03.2003, the said fact can very well be brought to the notice to the Income Tax Department as well as the official respondents or tax authorities. Once the said fact is brought to the notice of the authorities, it is open to them to consider the same and decide as to whether still the petitioner is having any Income Tax due for the year ending 31.03.2003 and if so, it can be recovered in the manner known to law. Perhaps, if no such due is there towards the Income Tax Department for the year ending 31.03.2003, there can be no such proceedings and at any cost, the salary payable to the petitioner for the month of February 2003, that has been admittedly withheld so far, can also to be released.

12. Therefore, the recovery sought for from the salary paid to the petitioner for the month of March and April 2003 need not be given effect to and therefore, the said order can no longer be an valid order to be sustained.

13. In the result, the impugned order is quashed with liberty to the respondents as well the Income Tax Department to verify the claim of the petitioner whether she has to pay any due to the Income Tax Department payable for the year ending

31.03.2003 and if so, it is open to the authorities to recover the same from the petitioner, in the manner known to law.

With the above observation, this writ petition is ordered. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Treasuries
State of Tamil Nadu, Panagal Building,
Saidapet, Chennai 600 015.

2.The Assistant Treasury Officer,
Sub Treasury, Katpadi.

+1cc to the Government Pleader, S.R.No. 58845

W.P.No.31610 of 2003

EV(CO)
GN(30/11/2018)