

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.04.2018

CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26202 of 2006
and M.P.No.2 of 2006

R.Perumal

... Petitioner

Vs.

1.The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai 600 009.

2.The Commissioner of Technical Education,
Chennai 600 025.

3.The Principal
PAC Ramasamy Raja Polytechnic College,
Rajapalayam 626 108.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the issuance of letter No.34033/SI/2004 dated 14.03.2006 on the file of the 2nd respondent, the consequential impugned letter in ref.No.F/2095/2006 dated 23.03.2006 on the file of the 3rd respondent, quash the same.

For Petitioner : Mr.K.Goviganesan

For R1 and R2 : Mr.K.Ravikumar
Addl.Govt.Pleader

For R3 : Ms.Janani for
Mr. P.Parthasarathy

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the issuance of letter No.34033/SI/2004 dated 14.03.2006 on the file of the 2nd respondent, the consequential impugned letter in ref.No.F/2095/2006 dated 23.03.2006 on the file of the 3rd respondent, quash the same.

2. The case of the petitioner is that he was appointed as Lab Assistant in the third respondent College on 12.12.1975 and the petitioner was promoted as Machine Operator in the year 1988. After serving 28 years, he resigned the service on 22.03.2003 under VRS and the said request was accepted and accordingly, the petitioner was relieved from his service. After retirement, the petitioner was paid pension of Rs.4,180/- and subsequently, his last drawn pension is Rs.4,860/- per month. While being so, the said G.O.Ms.136, Finance (Pension) Department dated 29.02.1984, the Tamil Nadu Government Employees Special Provident fund-cum-Gratuity Scheme came into existence with effect from 01.04.1984. According to the scheme, all regular Government servants are required to pay a uniform rate of Rs.20/- per month till one month prior to the date of superannuation or till the subscription together with interest adds upto Rs.5,000/- whichever is earlier. Retiring on superannuation, he will be paid the actual amount to recover together with interest thereon and in addition, the Government will be contributing a fixed amount of Rs.5,000/-. Subsequently, another G.O.Ms.No.609 dated 30.08.1991, orders were issued allowing the Government contribution of Rs.5,000/- in the case of voluntary retirement and by G.O.Ms.No.351. Thereafter, the Government issued another G.O.Ms.No.429 dated 15.09.2000, the Government was enhanced to Rs.10,000/- in all categories. The petitioner was paid a sum of Rs.10,000/- as contribution from the Government on the date of Voluntary Retirement i.e. 22.03.2003. While so, after retirement, the impugned order can be passed wherein citing a letter dated 04.02.2004, the Government had clarified that after extending the benefit of Government Contribution of Rs.10,000/- is not applicable to the Staff Members of Aided Technical Institutions, the second respondent had ordered for the recovery of excess payment of Rs.5,000/- towards Government Contribution as against the writ petitioner.

3. The learned counsel for the petitioner would submit that he relied upon the Judgment of the Hon'ble Supreme Court of India in the case of High Court of Punjab and Haryana & Ors. vs. Jagdev Singh, it is appropriate to incorporate para-10, which is extracted hereunder:

"10. In State of Punjab and Ors.etc., v.Rafiq Musih (White Washer) etc., 2014(3) SLJ 136 (SC)= (2015)4 SCC 334, 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 fair outweigh the equitable balance of the employer's right to recover."

The Hon'ble Apex Court in the decision cited supra has held that on payment which was being made in excess cannot be recovered from the employee who retired from his service.

4. The Judgment of this Court cited supra squarely covers the present case on hand. Accordingly, I am inclined to grant the relief to the petitioner and the impugned letter passed by the second respondent and third respondent dated 04.08.2004 and 23.03.2006 respectively are hereby set aside. The writ petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1.The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai 600 009.

2.The Commissioner of Technical Education,
Chennai 600 025.

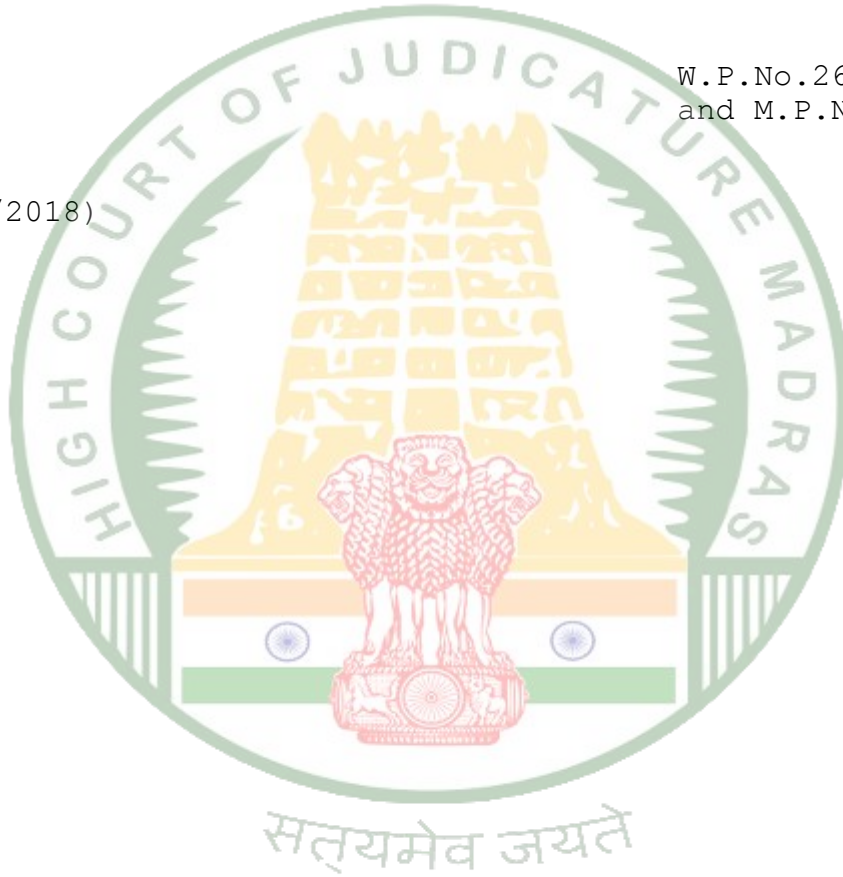
3.The Principal
PAC Ramasamy Raja Polytechnic College,
Rajapalayam 626 108.

+1 CC to Mr. Mr.K.Goviganesan Advocate SR.NO.30161

+1 CC to the Government Pleader High Court Madras SR.NO.30719

W.P.No.26202 of 2006
and M.P.No.2 of 2006

NMI (CO)
VC (16/05/2018)



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