

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5/12/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2673 of 2018
and
CMP Nos.21743 and 21744 of 2018

1. State of Tamil Nadu
rep. By its Secretary to Government
Higher Education Department
Fort St. George
Chennai 600 009.
 2. The Director of Collegiate Education
DMS Campus
College Road
Nungambakkam
Chennai 600 034.
 3. The Joint Director of Treasuries
Coimbatore Region
Coimbatore.
 4. The Principal
Chikkana Govt. Arts College
Tiruppur 2
Tiruppur District.
 5. The Treasury officer
District Treasury
Tiruppur
Tiruppur District.
- ... Appellants

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Vs

K.M.Kamalam ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 17/8/2017 made in W.P.No.8039 of 2016.

Prayer in WP No.8039/2016 : Writ petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to Call for the records relating to the order passed by the 5th respondent in Na.Ka.NO. 15942/2015/L1 dated 27.11.2015 & RC. No. 15942/2015/L1 dated 27.11.2015 quash the same and further direct the respondents 2 to 5 to refund the recovery made from the petitioner and to continue to pay Family Pension treating the petitioner Husbands last drawn Salary as 3700-5700 with corresponding pay scale revision based on various Pay Commission recommendations

For Appellants : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

For Respondent : Mr.Venkatasamy Babu

J U D G E M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is directed against the order, dated 17/8/2017 made in W.P.No.8039 of 2016, by which the writ Court, set aside the recovery proceedings, in R.C.No.15942/2015/L1, dated 24/11/2015 and 27/11/2015, respectively, issued by the Treasury Officer, District Treasury, Tirupur District/fifth appellant herein and directed that the amount already recovered shall be reimbursed to the petitioner therein and further, directed the respondents to continue to pay family pension drawn by the husband of the respondent.

2. At the time of filing of the writ petition, wife of the Government servant (since deceased) was 82 years and she was paid family pension. When recovery proceeding was challenged, writ Court, following a decision of the Hon'ble Supreme Court, in State of Punjab Vs. Rafiq Masih {2015 (4) SCC - 334}, in particular, paragraph 18, wherein the Hon'ble Apex Court, held that case of the respondent falls under the category (ii) and that no recovery can be made on the retired employee. Paragraph 18 of the Rafiq's case is reproduced hereunder:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, 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."

3. Added further, Mr.Venkatasamy Babu, learned counsel for the respondent submitted that amount recovered has been refunded by the appellants. Submission of the learned counsel is placed on record.

4. Though appellants have assailed the order of the writ Court, on various grounds, in the light of the settled proposition of law, stated supra, we do not find any error in the order of the writ Court. Hence Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

mvs.

To

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Tiruppur, Tiruppur District.

+1cc to M/s.Venkataswamy Babu, Advocate SR.No.83688

W.A.No.2673 of 2018

KJI (CO)

GMV (04/01/2019)

सत्यमेव जयते

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