BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 13.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.7191 of 2011
and
M.P.(MD).No.1 of 2011

A.Kasthuri ..Petitioner

Vs

1. The Branch Officer,
   Office of the Principal Account
   General (A & E), Tamil Nadu,
   361, Anna Salai, Madras-600 018.

2. The Treasury Officer,
   Sub-Treasury,
   Lalgudi, Trichy District.

3. The Chief Educational Officer,
   Trichy District, Trichy. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in relating to the order of the 1^{st} respondent dated 08.12.2010 made in No.P17/4/REV/2010-2011/11703660/PPO and quash the same and consequently direct the respondents to pay pension to the petitioner as per order dated 22.03.2010, which was fixed by the 1^{st} respondent and to pay the arrears to the petitioner without any deduction forthwith.

For Petitioner : Mr.J.Parekh Kumar

For Respondent-1 : Mr.P.Gunasekaran
For Respondent Nos.2&3 : Mr.M.Pandiarajan Additional Government Pleader

ORDER

The petitioner has come forward with this writ petition for issuance of Writ of Certiorarified Mandamus, calling for the records in relating to the order of the 1^{st} respondent dated 08.12.2010 and quash the same and consequently direct the respondents to pay pension to the petitioner as per order dated 22.03.2010, which was fixed by the 1st respondent and also pay the arrears to the petitioner without any deduction forthwith.

2.The case of the petitioner is that she joined the services as Sewing Mistress on 07.08.1978 and pursuant to the order dated 30.11.1981, her services have been regularized from the initial date of appointment. The petitioner served in various places and finally, in Trichirappalli and retired on 31.05.2007. At the time of retirement, her monthly pension was fixed as Rs.5655/- by the first respondent in the Pension Payment Order in PPO No.C603215/EDG dated 26.04.2007. Subsequently, the pension was revised to Rs.7,255/- by the first respondent through his order dated 22.03.2010 with effect from 01.06.2009 and that the petitioner is getting pension regularly. To her shock, the impugned communication has been issued by the first respondent in the month of April 2011 stating that the amount was fixed and excess payment/wrong payment would be recovered. According to her, such an impugned order is illegal and without issuing any prior notice to the petitioner. Hence, the order of recovery passed by the first respondent is violative of statutory provisions. Therefore, this Court may pass an order quashing the impugned order dated 08.12.2010 and consequently direct the respondents to pay the pension as per the order dated 22.03.2010.

3.The first respondent has filed a counter stating that the petitioner was employed as a Sewing Mistress in the Government High School, Thalakkudy, Trichy and that the said school was not made as party. It is contended that pursuant to the information given by the school, the petitioner was given pensionary benefits and other benefits with effect from 01.07.2007. Subsequently, there was a proposal from the school reducing the pay of the petitioner stating that excess amount has been paid and the same has got to be recovered. It is further stated that the petitioner was consulted for the recovery and an order of recovery was passed on 08.12.2010 and within a period of 6 months from the date of impugned order. As the petitioner has consented for recovery of the amount, there is no illegality in the impugned order passed. It is further contended that if there is any erroneous payment and there is a consent given and there is no hard and fast rule that the petitioner need to be heard. Apart from that the person from whom the communication was received with regard to the rejection in payment was not made a party.

4.In reply, the petitioner had stated that even though counter was filed in April 2015, it was served to the petitioner only in Januray 2018 and that there is no consent obtained from the petitioner. After the rejection and after the fixation of the retirement benefits, the same cannot be reduced without hearing the petitioner. Hence, the impugned order has got to go and the petitioner should be given all benefits.

5.Heard both sides.

6.It is not in dispute that the petitioner joined service in 1978 and she got retired on 31.05.2007 and pensionary benefits were already granted with effect from 01.07.2007 and pursuant to the information given from the school with regard to wrong fixation, it was decided to recover the excess payment apart from rejection in the pensionary payment. There is no averment in the affidavit with regard to the consent. Even though the counter is of the year April 2015, it was served to the petitioner only in January 2018. The petitioner has sought time to file a reply to meet out the points raised by the respondent and to implead the school. Even assuming that the petitioner is going to implead the school as a party, unless and otherwise the proposal sent by the school is questioned and set at naught, the petitioner cannot have a grievance over the impugned order. That apart much water has flown, there is a delay.

7.At this juncture, it is relevant to refer a decision of the Honourable Supreme Court in the case of ***K.Venkateshwarlu V. State of Andhra Pradesh***, reported in **AIR 2012 Supreme Court 2951.** The relevant portion of the said judgment is extracted hereunder:

> "16.We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government Officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligations on the payee to repay the money, otherwise it would amount to unjust enrichment."

8.In view of the above, I find that there is no error in the impugned order passed by the first respondent, dated 08.12.2010, as it is a consequential order and that the original order has not been challenged by the petitioner.

9.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Treasury Officer,
   Sub-Treasury,
   Lalgudi, Trichy District.

2. The Chief Educational Officer,
   Trichy District, Trichy.

+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 78768
+ 1 CC TO Mr.P.SRINIVAS, ADVOCATE IN SR No. 78713
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 78503

VS
TE/SKN/SAR-1 : 27/09/2018 : 4P/6C

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