

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.39200 OF 2017

Dated 20th July 2018

Between:

Kacharla Chandra Sekhar, S/o.Mallaiah.

...Petitioner

And

1. The State of Telangana rep.by its Special Chief Secretary,
School Education Department, Secretariat Buildings, Hyderabad
and three others.

...Respondents

The Court made the following:



THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.39200 OF 2017

ORDER:

The petitioner retired from service on attaining the age of superannuation on 31.05.2016. By order of the Director of Adult Education dated 25.09.2017, while sanctioning earned leave, the Deputy Director of Adult Education, Nalgonda was instructed to withdraw Rs.4,69,000/- from encashment amount and to remit the same to the account of Jana Shikshana Samsthan, Nalgonda, which was excess amount paid by the petitioner.

2. Learned counsel for petitioner would submit that the issue relates to the period prior to the year 2012 whereas the petitioner retired from service on 31.05.2016 and the order was passed on 25.09.2017. As per Rule 9(6) of the Telangana State Revised Pension Rules, 1980 ("the Rules" for brevity), departmental proceedings are not maintainable to an incident occurred four years prior to passing of orders and therefore, the order impugned is liable to be set aside on that ground alone. Learned counsel for the petitioner by referring to memorandum dated 13.09.2017 of the Government would submit that the Director was directed to examine whether proceedings can be initiated having regard to provision in Rule 9 of the Rules. Without examining the said issue, straight away passed the orders. Learned counsel also contends that the Director is not competent to effect recovery.

3. Learned Government Pleader sought to contend that the Comptroller and Auditor General pointed out illegal payments

made to Jana Shikshana Samsthan and in view of his report, the matter was verified and it was found that the petitioner illegally paid an amount of Rs.4,69,000/- causing loss to the Government and therefore, recovery is effected.

4. It is not in dispute that before passing the order, the Director has not caused any notice on the petitioner calling upon him to show cause as to why the amount should not be recovered from him but straight away passed order to recover the amount. Rule 9(7) of the Rules vests power in the Government to effect recovery of the loss caused to the Government. This provision is an exception carved to the provision in Rule 9 (6) of the Rules and if loss is caused to Government by an employee, amount can be recovered. However, two important requirements of the Rule are, (1) decision should be taken by the Government and the Government alone can order recovery and (2) it should be preceded by a notice and an opportunity to submit explanation to the employee.

5. In the instant case, neither the decision was taken by the Government nor was the decision preceded by a notice. On this touchstone alone, the order impugned is liable to be set aside and is, accordingly, set aside. However, the learned Government Pleader points out grave illegality in paying the amounts to Jana Shikshana Samsthan. If this is so, it is always open to the Government to take appropriate action by strictly complying with the provision in Rule 9(7) of the Rules.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(P.NAVEEN RAO, J)

20th July 2018
RRB

