

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.11999 & 12000 of 2013

and

M.P.Nos.1, 1, of 2014 & 2, 2 of 2013

N.Rajendran

.. Petitioner
in W.P.No.11999 of 2013

N.Srinivasan

..Petitioner
in W.P.No.12000 of 2013

Vs.

1. The Government of Tamil Nadu,
Rep.by Secretary to the Government,
Finance (Pay Cell) Department,
Fort St.George, Chennai 600 009.
2. The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai 600 009.
3. The Director of School Education,
College Road, Chennai 600 006.
4. The Chief Educational Officer,
Villupuram District, Villupuram.
5. The District Educational Officer,
Villupuram District, Villupuram.
6. The Headmaster,
Government Boys Higher Secondary School,
Thiagathurugam, Kallakurichi Raluk,
Villupuram District.

.. Respondents
in Both WPs

COMMON PRAYER:

These Writ petitions are filed under Article 226 of the Constitution of India, for a Writ of certiorarified Mandamus to call for the records of the 5th respondent in proceedings Na.Ka.No.88886/A1/2012 dated 20.3.2013 and 6th respondent in

Na.Ka.No.445/12-13 dated 28.3.2013 and quash the same and issue a consequential direction to the respondents to restore the pay of petitioners as on 1.1.2006 in the pay band of Rs.15600-39100+Grade Pay 5400, as fixed originally in Na.Ka.No.229/11-12 dated 14.12.2011 of the 5th respondent with all benefits.

For Petitioner : Mr.R.Saseetharan
(in both WPs)

For Respondents : Mr.P.Raja
(in both WPs) Government Advocate

COMMON ORDER

The instant writ petitions are filed for certiorarified Mandamus to call for the records of the 5th respondent in proceedings Na.Ka.No.88886/A1/2012 dated 20.3.2013 and 6th respondent in Na.Ka.No.445/12-13 dated 28.3.2013 and issue a consequential direction to the respondents to restore the pay of petitioners as on 1.1.2006 in the pay band of Rs.15600-39100+Grade Pay 5400, as fixed originally in Na.Ka.No.229/11-12 dated 14.12.2011 of the 5th respondent with all benefits.

2.The short facts are that the petitioners who are Vocational Instructors were granted selection grade pay on 14.12.2011, by which the pay was increased to Rs.15600/- with grade pay of Rs.5400/- from 01.01.2006 with monetary benefits from 01.01.2011.

3.However, by an order dated 28.03.2013, the pay was re-fixed and was revised to a lower level pay of Rs.9300/- with grade pay of Rs.4600/-. There was an order also to recover the excess amount paid to the petitioners from 01.01.2011. However, the Government passed G.O.Ms.No.306 Finance (CMPS) Department dated 12.09.2018, increasing the pay of the petitioners from 4600 to 5400 from 01.04.2013. The petitioners are therefore now faced with the recovery of excess amount which was paid to them from 01.01.2011 to 31.03.2013. It is well settled that if excess payment is made by the employer by applying wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, then, when such employees are asked to pay the excess amount they would be faced with hardship, when the amount is sought to be recovered from them and if there was no misrepresentation or fraud by the employee in grant of excess amount of pay, and it should not be recovered. The Hon'ble Supreme Court in Syd Abdul and Other .Vs. State of Bihar and Others reported in (2009) 3 SCC 475, as observed as under:

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, Shyam Babu Verma vs. Union of India, Union of India vs. M. Bhaskar, V. Gangaram vs. Director, Col. B.J. Akkara [Retd.] v. Government of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh & and Bihar SEB v. Bijay Bhadur."

4. In view of the above, the order for recovering the excess amount from the pay of the petitioner from 01.01.2011 to 31.03.2013 stands set aside. The Writ Petitions are disposed of on the above mentioned terms. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Government of Tamil Nadu,
Rep.by Secretary to the Government,
Finance (Pay Cell) Department,
Fort St.George, Chennai 600 009.
2. The Secretary to the Government,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai 600 009.
3. The Director of School Education,
College Road, Chennai 600 006.
4. The Chief Educational Officer,
Villupuram District, Villupuram.
5. The District Educational Officer,
Villupuram District, Villupuram.
6. The Headmaster,
Government Boys Higher Secondary School,
Thiagathurugam, Kallakurichi Raluk,
Villupuram District.

+1cc to Mr.R.Saseetharan, Advocate, S.R.No.90208

+1cc to the Government Pleader, S.R.No.90383

W.P.Nos.11999 & 12000 of 2013

CA(CO)
CS/18/12/2019

सत्यमेव जयते

WEB COPY