

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3263 of 2019
and
W.M.P.No.3539 of 2019

Ms.R.Jansirani

..Petitioner

vs

- 1.The Chief Educational Officer
Thiruvannamalai District
Thiruvannamalai.
- 2.The District Educational Officer
Chengam Educational District
Chengam
Thiruvannamalai District.
- 3.The Accountant General (A&E)
361, Anna Salai
Chennai - 600 018.
- 4.The Block Educational Officer
Thandarampet Block
Thandarampet
Thiruvannamalai District - 606 707

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 4th respondent on 05.07.2018 in Proc.Rc.No.125/A1/18 and quash the same and consequently direct the respondents 3 and 4 to restore the pay, grade pay and allowances last drawn by the petitioner for grant of pension and to release the recovered amount from the Death Cum Retirement Gratuity of the petitioner along with appropriate interest.

For Petitioner : Mr.R.Dhamodaran

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader

O R D E R

The order of recovery issued by the 4th respondent in proceedings dated 05.07.2018 is sought to be quashed in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the impugned order of recovery has been issued after a lapse of about 18 Months from the date of the retirement of the writ petitioner and without issuing any show cause notice and opportunity to the writ petitioner. Thus, the unilateral decision taken by the respondents at the instance of the Accountant General for imposing the recovery is in violation of the principles of natural justice.

3.This Court is of an opinion that any order affecting the service rights of an employee must be issued only by affording opportunity to the employee concerned. This apart, the writ petitioner is a retired employee and even in case of any erroneous fixation, the authorities competent are at liberty to correct the fixation and the recovery cannot be imposed at all. In other words, the correctness or otherwise of the fixation of pay can be undertaken and the correct revision of pay can be adopted. However, the excess payment if any made cannot be recovered in respect of the retired employees in view of the legal principles settled by the Apex Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334], laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgment, which is extracted 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.

4. Thus, there is no misrepresentation or otherwise on the part of the writ petitioner in claiming the revision of pay. Thus, the present writ petition deserves consideration. It is made clear that the respondents are at liberty to correct the scale of pay and revise the scale of pay or Grade Pay in accordance with the Government orders in force. However, the excess payment if any made to the writ petitioner cannot be recovered at all in view of the principles laid down in the judgment cited supra.

5. Accordingly, the impugned order passed by the 4th respondent in proceedings in Proc.Rc.No.125/A1/18 on 05.07.2018 is quashed and the respondents are directed to correct the Scale of Pay of the writ petitioner as per the Government orders and pay rules in force.

6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

kak
To

1. The Chief Educational Officer
Thiruvannamalai District
Thiruvannamalai.

2. The District Educational Officer
Chengam Educational District
Chengam
Thiruvannamalai District.

WEB COPY

3.The Accountant General (A&E)
361, Anna Salai
Chennai - 600 018.

4.The Block Educational Officer
Thandarampet Block
Thandarampet
Thiruvannamalai District - 606 707

+1 CC to The Govt. Pleader sr 10745.
+1 CC to Mr.R.Dhamodaran, Advocate sr 9463.

W.P.No.3263 of 2019

KK(CO)
SP(21/02/2019)



WEB COPY