

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 5873 OF 2011

AND

M.P. NO. 2 OF 2011

B.Thangaraj

.. Petitioner

- Vs -

1. Director of Collegiate Education
College Road, Chennai 600 006.

2. Joint Director of Collegiate Education
Chennai.

3. Secretary
SIVET College
Gowrivakkam, Chennai - 73.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to the proceedings Ref. No.299//2AM-10 dated 14.12.09 issued by the 3rd respondent and quash the same.

For Petitioner : Ms. S.Nandhinidevi

For Respondents: Mr. V.Kadhirvelu, Spl. GP,
for RR-1 & 2

No Appearance for R-3

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ORDER

The petitioner is before this Court challenging the order dated 14.12.07, whereby order has been passed directing recovery of the amount paid to the petitioner towards additional increment.

2. It is the case of the learned counsel for the petitioner that one increment was granted to him for passing Accounts Test, while he was working as Junior Assistant in the 3rd respondent College. According to the petitioner, as per the relevant instruction of the Government, the increment is given for passing Accounts Test and the same was given to him from the year 2001. However, on the basis of audit objections, the said payment was stopped from October, 2006 and, thereafter, order was passed for recovery of a sum of Rs.10,425/- which was already paid to the petitioner. Aggrieved by the order by which the amount already paid to the petitioner is sought to be recovered, the present petition has been filed.

3. In response to the notice in the writ petition, a counter affidavit has been filed. Though reasons have been spelt out in the impugned order withdrawing the benefit of one increment granted to the petitioner, in the counter affidavit, in paragraphs 3 to 5, it has been clarified as under :-

"3. On the date of promotion itself the petitioner was granted an incentive increment of Rs.100 for having passed the Account Test for Subordinate Officers Part-I on 16.10.2001 in the scale of pay of Rs.4000-100-6000.

4. It is respectfully submitted that the Director of Collegiate Education in the Proceedings K.Dis.No.36066/B1/2005 dated 26.10.2005 has issued orders to the effect that one incentive increment for having passed the Account Test for Subordinate Officers Part I shall not be granted to those who opted to draw their pay at the time of promotion in the lower category scale of pay.

5. It is respectfully submitted that the petitioner has got fixed the pay in the promoted post of Junior Assistant in the scale of pay Rs.4000-100-6000 under which he is already drawing pay in the lower category, i.e., in the post of Lab Assistant. As the scale of pay of the post of Selection Grade Lab Assistant is higher than the scale of pay of the post of Junior Assistant he opted for the higher scale of pay. As the petitioner opted for lower category scale of pay he is not entitled to draw one incentive increment for having passed Account Test for Subordinate Officer Part I as per the order issued in Director of Collegiate Education's Proceedings K.Dis.No.36066/B1/2005 dated 26.10.2005. Accordingly objections have

been raised in departmental audit of the Joint Director of Collegiate Education, Chennai - 15 for the year 2004-2005 that the petitioner is not eligible to draw incentive increment for having passed the Account Test for Subordinate Officers Part I from 16.10.2001 as the pay of the petitioner has been fixed in the lower category scale of pay on promotion as Junior Assistant and the Secretary of the 3rd respondent College has been directed to recover the excess paid amount due to this wrong fixation of pay and to remit it in the Government Account."

4. From the above it is clear that the petitioner was not entitled to the grant of one increment, which was given to him from the year 2001 as per the clarification given in the counter affidavit, extracted above.

5. However, learned counsel appearing for the petitioner submits that during the pendency of the petition, the petitioner had attained the age of superannuation and retired from service and, therefore, pleads that the recovery, which has been stayed by this Court may not be recovered from the pensionary benefits payable to the petitioner.

6. On a careful perusal of the submissions, this Court is in agreement with the said submission made by the learned counsel for the petitioner. Once the petitioner has retired from service and that the payment of one additional increment has not been made due to any misrepresentation on his part, the same cannot be recovered from the retired employee, who is a Class-III employee, as has been laid down by the Hon'ble Supreme Court in catena of decisions. In fact, time and again, this Court has also followed the ratio as laid down by the Hon'ble Supreme Court.

7. In such circumstances, although the impugned order passed by the respondent is not to be interfered with, but at the same time, it is to be made clear that the recovery proceedings as initiated for the recovery of the amount from the petitioner shall also not be proceeded with, as the petitioner is a Class-III employee and had also retired from service.

8. In the above circumstances, this writ petition is allowed in part confirming the order passed by the respondents insofar as withdrawing the one increment granted to the petitioner, but, there shall be no recovery of the amount already paid to the petitioner, and the order of stay of recovery of the amount from the petitioner granted vide order

dated 21.04.2011 is made absolute. However, there shall be no order as to costs.
GLN

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Director of Collegiate Education
College Road, Chennai 600 006.
2. The Joint Director of Collegiate Education
Chennai.

+1cc to Mr.R.Subramanian, Advocate, SR.No.30098
+1cc to the Govt.Pleader, Vide Sr.No.31608

W.P. NO.5873 OF 2011

Kak(10/05/2019)



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