

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.02.2019

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

W.P.No.3551 of 2018
and
W.M.P.No.4351 of 2018

M.Jayaraman

..Petitioner

vs

1.The District Adi-Dravidar Welfare Officer
Collectorate, Cuddalore.
Cuddalore District, Pin-607 001.

2.The Special Tahsildar(Adi Dravidar Welfare)
Vridhachalam
Cuddalore District, Pin-606 001

3.The Accountant General
(Accounts & Entitlements)
Tamil Nadu, 361, Anna Salai
Teynampet, Chennai - 600 018.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the Third Respondent dated 30.08.2017 PPO No.R1620488 and the consequential orders of the second Respondent issued in Na.Ka. Aa/191/ 2016 dated 31.10.2017 and that of the third respondent in PEN 16/4 PT.6656/2017-18/100269 dated 04-Dec-17 and quash the said orders and direct the respondents to restore the Petitioner's pay as it existed prior to the issuance of the impugned order and further direct the respondents to refund the recovered DCRG amount of Rs.4,16,860/- with admissible interest for the said belated payment.

For Petitioner : Mr.J.Lakshmi Narayanan

For Respondents : Mr.D.Suriyanarayanan
Additional Government Pleader

O R D E R

The order of re-fixation of the pay of the writ petitioner as well as the recovery is under challenge in the present writ petition.

2.The impugned order states that the pensionary benefits are finalized with last drawn pay without admitting the incentive increments for the additional educational qualifications of M.A., and B.Ed., as per the G.O.Ms.No.83, School Education Department dated 28.04.2017.

3.This Court is of an opinion that the Teachers, who all are working in Schools are entitled to get two incentive increments in their entire service as per the Government orders in force. However, the applicability of the said Government order with reference to the qualifications acquired by the writ petitioners are to be verified in consonance with the terms and conditions stipulated in the Government order. In other words, the eligibility of the writ petitioners is to be verified with reference to the terms and conditions stipulated in various Government orders. The High Court also passed number of orders allowing the incentive increment to be claimed by the Teachers on acquiring the additional educational qualifications. But, the terms and conditions stipulated in the Government orders are to be followed scrupulously by the authorities concerned. Thus, in respect of the fixation of pay and also the last drawn pay as applicable to the writ petitioner is to be decided by the respondents afresh with reference to the Government orders passed in respect of grant of incentive increments and its applicability.

4.As far as the recovery portion is concerned, this Court is of an opinion that there is no misrepresentation or otherwise on the part of the writ petitioner. Undoubtedly, the writ petitioner submitted an application claiming incentive increment on the ground that he possessed the additional educational qualifications. The establishment granted the incentive increments, now the petitioner is a retired person and receiving pension.

5.This being the factum, the recovery cannot be imposed in view of the legal principles settled in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, 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.

6. In view of the fact that the writ petitioner is a retired employee, the recovery cannot be imposed. However, the respondents are at liberty to verify the eligibility of the writ petitioner to claim incentive increment with reference to the Government orders in force and accordingly, take a decision for the purpose of fixation of pay and revision of pension. However, the recovery cannot be effected.

7. Accordingly, the impugned order of recovery passed by the Special Tahsildar, (ADW) in proceedings in Na.Ka. Aa/191/ 2016 dated 31.10.2017 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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3.The Accountant General
(Accounts&Entitlements)
Tamil Nadu, 361, Anna Salai
Teynampet, Chennai - 600 018.

+1cc to Mr.J.Lakshminarayanan, Advocate, S.R.No.10664
+1cc to the Government Pleader, S.R.No.11389

W.P.No.3551 of 2018

CP(CO)

rrs 06/03/2019



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