

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.4972 of 2017
and
W.M.P.No.5212 of 2017

K.Madhesh

... Petitioner

Vs.

- 1.The Registrar of Co-operative Societies,
NVN.Maaligai,
No.170, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies,
Salem Region,
Salem District.
- 3.The Deputy Registrar,
Co-operative Societies,
Sankari Circle,
Sankari Taluk,
Salem District.
- 4.The President,
S.331 Edanganasalai Primary Agricultural
Co-operative Credit Society Ltd.,
Edanganasalai Post, Elampillai - Via,
Sankari Taluk,
Salem District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned communication of the 4th respondent dated 28-01-2012 and quash the same consequently by directing the respondents to disburse the EPF amount of Rs.42,473/- with prevailing rate of interest from the date of retirement to the date of realization.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.L.P.Shanmugasundaram,
Additional Government Pleader

O R D E R

A short point arises in this Writ Petition. The petitioner joined in the service of the fourth respondent/Co-operative Department as an Attender on 01.06.1968 and retired on 30.04.2010. This is a case where the counter of the fourth respondent itself states gracefully that the petitioner had rendered his service in an effective manner discharging 42 years of service effectively with and unblemished record.

2. While this is so, after retirement, while computing the terminal benefits of the petitioner, a sum of Rs.42,473/- was withheld by the Special Officer vide order dated 26.04.2010.

3. On the basis of the aforesaid order dated 26.04.2010, the present impugned order, dated 28.01.2012 has been passed by the fourth respondent, withholding the aforesaid amount and the same is challenged in this Writ Petition.

4. The learned counsel for the petitioner states that several representations were made before the respondents dated 04.10.2012, 16.09.2013, 12.06.2015 and 07.04.2016 and this has resulted in passing of the impugned order dated 26.04.2010.

5. The third respondent has passed order dated 20.10.2016 stating that the service of the petitioner is regularized from 01.06.1969 and the benefit of various circulars referred by the petitioner in his representations were thus not available to him.

6. Mr.C.Prabakaran, learned counsel appears for the petitioner and Mr.L.P.Shanmugasundaram, learned Additional Government Pleader appears for the respondents.

7. The learned counsel for the petitioner relies on the judgment of the Supreme Court in the case of State of Punjab & Others Vs. Rafiq Masih (CDJ 2014 SC 1054). In paragraph No.5, the Bench crystallises the law as follows:

"5. Merely on account of the fact, that the release of these monetary benefits was based on a mistaken belief at the hands of the employer, and further, because the employees had no role in the determination of the employer, could it be legally feasible, for the private respondents to assert, that they should be exempted from refunding the excess amount received by them? Insofar as the above issue is concerned, it is necessary to keep in mind, that the following reference was made by a Division Bench of two Judges of this Court, for consideration by a larger Bench:"

8. Several cases earlier decided by the Hon'ble Supreme Court and concluding at paragraph Nos.11 and 12 are as follows:

"11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

(i). Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:

"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 v. State of Haryana*, 1995 Supp. (1) SCC 18, *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521, *Union of India v. M. Bhaskar*, (1996) 4 SCC 416, *V. Ganga Ram v. Director*, (1997) 6 SCC 139, *Col. B.J. Akkara (Retd.) v. Govt. of India*, (2006) 11 SCC 709, *Purshottam Lal Das v. State of Bihar*, (2006) 11 SCC 492, *Punjab National Bank v. Manjeet Singh*, (2006) 8 SCC 647 and *Bihar SEB v. Bijay Bahadur*, (2000) 10 SCC 99."

(emphasis is ours)

First and foremost, it is pertinent to note, that this Court in its judgment in *Syed Abdul Qadir's case* (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the

education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee. In this context, reference may also be made to the decision rendered by this Court in *Shyam Babu Verma v. Union of India* (1994) 2 SCC 521, wherein this Court observed as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

(emphasis is ours)

It is apparent, that in *Shyam Babu Verma's* case (*supra*), the higher pay-scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

(ii). Examining a similar proposition, this Court in Col. B.J. Akkara v. Government of India, (2006) 11 SCC 709, observed as under: "28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery." (emphasis is ours)

A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in

concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

(iii). This Court in *Syed Abdul Qadir v. State of Bihar* (supra) held as follows:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

(emphasis is ours)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in *Syed Abdul Qadir's* case

(supra), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

(iv). Last of all, reference may be made to the decision in *Sahib Ram Verma v. Union of India*, (1995) Supp. 1 SCC 18, wherein it was concluded as under:

"4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second

class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science.

The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

(emphasis is ours)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science, the degree of M.Lib. Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying

the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

9. Thus recovery of excess benefits paid to an employee should be made within one(1) year from the date of retirement of an employee. In the present case, the petitioner has admittedly retired on 30.04.2010, whereas the order of recovery has been passed on 28.01.2012, long par retirement and beyond a period of one year therefrom.

10.This Writ Petition is allowed. The differential of an amount of Rs.42,473/- be paid over to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Registrar of Co-operative Societies,
NVN.Maalgai,
No.170, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
Salem Region,
Salem District.

3.The Deputy Registrar,
Co-operative Societies,
Sankari Circle,
Sankari Taluk,
Salem District.

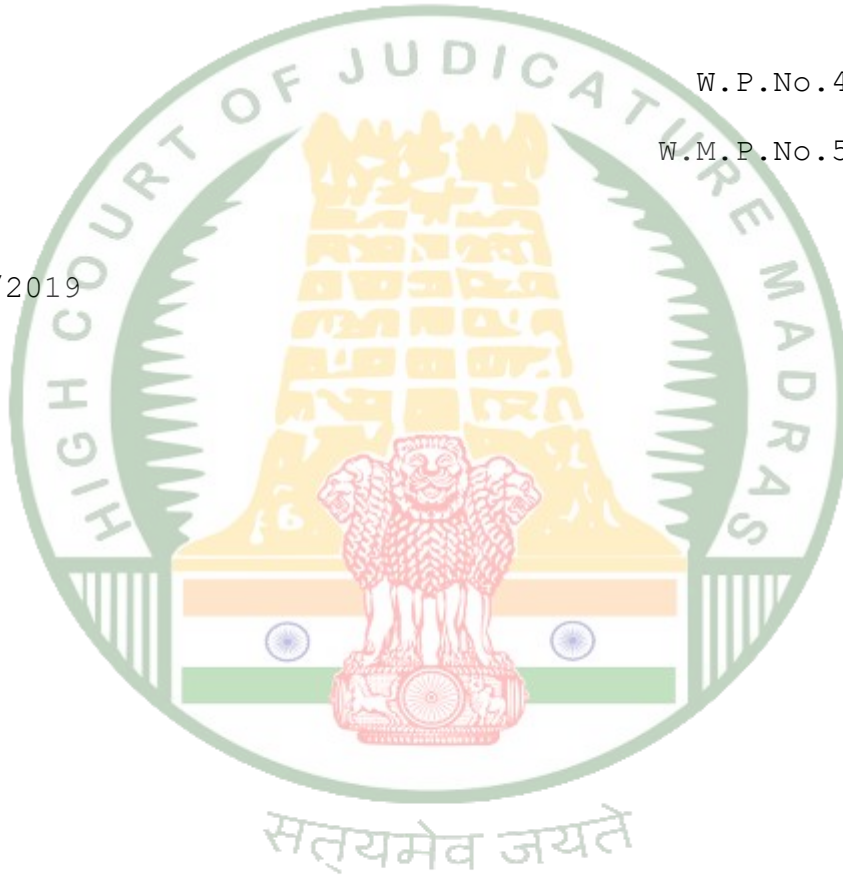
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4.The President,
S.331 Edanganasalai Primary Agricultural
Co-operative Credit Society Ltd.,
Edanganasalai Post, Elampillai - Via,
Sankari Taluk,
Salem District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr.37587
+1cc to Mr.C.Prabakaran, Advocate Sr.37022
+1cc to the Special Government Pleader Sr.38129

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