

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.38645 of 2005 and
W.P.M.P.No.41385 of 2005

V.Ramalingam

... Petitioner

vs.

1.The Senior Accounts Officer Pension 18,
O/o.The Principal Accountant - General,
(Accounts & Entitlements)
Tamil Nadu - 361, Annasalai,
Chennai - 18.

2.The Headmaster,
M.M.R.Government High School,
Moovalur - 609 806
Nagapattinam District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records made in No.AG(A&E)/Pension18/IV/R33-221/AR/02-03/49 dated 15.05.2002 on the file of the 1st respondent and quash the same and direct the respondents to revise and restore the retirement benefits on the basis of last drawn pay of the petitioner i.e., Rs.11,300/- with all arrears.

For Petitioners: Mr.R.D.Ashok Kumar
for M/s.S.N.Ravichandran

For R1 : Mr.V.Vijay Shankar

For R2 : Mrs.P.Kavitha
Govt. Advocate

O R D E R

The Writ Petition has been filed, challenging the order of the 1st respondent dated 15.05.2002 made in No.AG(A&E)/Pension18/ IV/R33-221/AR/02-03/49, by which the bonus increment granted to the petitioner was cancelled and the amount was ordered to be recovered from his pension. The petitioner also sought a direction to the respondents to

revise and restore the retirement benefits on the basis of last drawn pay of the petitioner i.e., Rs.11,300/- with all arrears.

2. It is the case of the petitioner that he joined the service as School Assistant Teacher on 21.07.1969 and thereafter, obtained selection grade in Secondary Grade Teacher post. The Government, by its order dated 28.09.1998 in G.O.Ms.No.562 Finance Department, granted Super Grade / Senior Grade for those employees, who were working in the same post for about 30 years without any promotional avenue. It is the further case of the petitioner that as he fulfilled the eligibility criteria, he was granted the bonus increment on 14.09.1999 and was given increments and he attained the age of superannuation on 30.06.2002. It is also the case of the petitioner that when his pension papers were forwarded for necessary approval, the impugned order came to be passed, stating that the bonus increment was wrongly granted to him, with a direction to repay the arrears to the department and his pension was also refixed. Stating that the action of the respondents in refixing the pension, that too without notice is an arbitrary exercise of power, the petitioner is before this Court, seeking to quash the impugned order.

3. The 2nd respondent has filed a counter affidavit, stating that the petitioner was sanctioned one bonus increment vide proceedings of the Headmaster of Government High School, Moovalur in K.Dis.No.289/99 dated 22.09.1999 and when the pension proposals were sent to the Accountant General, Chennai, the following remarks were made by the Accountant General on 15.05.200:

"As he declined promotion as High School Headmaster vide P.No.19 of S.B.Vol.3 and of 31 Vol.3, he is not eligible for bonus increment as per Government Letter No.36581/CMPC/2000-01 dated 17.7.2000. Hence excess paid pay and allowance may be recovered and remitted under intimation to this Office pending reply, entire DCRG is withheld."

3.1. In the counter affidavit, it is further stated that pursuant to the above remarks, the petitioner also remitted a sum of Rs.15,432/- in to the Sub Treasury, Mayiladuthurai on 01.07.2002. The bonus increment is allowed only to those, who had completed 30 years of service in the same post without any scope for further promotion and the petitioner was granted promotion twice and he relinquished the same and therefore, those, who have relinquished their promotion to higher post are not entitled to any bonus increment. It is also stated that the petitioner having paid the sum, cannot take a plea that the impugned order was not served to him, as the letter of the Accountant General was an order admitting pensionary benefits to the Head of Office. Therefore, it was prayed that

the Writ Petition is liable to be dismissed.

4. The counter affidavit filed by the 1st respondent states that on scrutiny of records, it was found that the petitioner declined the offer of his promotion as Headmaster and therefore, it cannot be said that he had been stagnated in the same post without any promotion and the excess amount paid was ordered to be recovered before releasing DCRG amount, which cannot be faulted with and the Writ Petition is liable to be dismissed.

5. Learned counsel for the petitioner submitted that the petitioner worked in the same pay scale and in the same post for about 30 years and having considered his eligibility criteria, he was granted bonus increment on the basis of G.O.Ms.No.562, Finance dated 28.03.1998. He also submitted that the 1st respondent, by merely relying upon a letter of the Government dated 17.07.2000, which cannot override the Government Order of the year 1999, cannot cancel the bonus increment and order recovery of the excess amount. In support of his submission, learned counsel cited a judgment of the Hon'ble Supreme Court in the case of State of Punjab and Others vs. Rafiq Masih (Whiter Washer) and others, reported in (2015) 4 SCC 334, wherein it was held as under:

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

6. Learned counsel for the petitioner further argued that in terms of the aforesaid judgment, the 1st respondent cannot attempt to unsettle the settled issue and the impugned order passed by the 1st respondent is a total non-application of

mind, which needs interference by this Court.

7. Per contra, Mr.V.Vijay Shankar, learned counsel for the 1st respondent contended that the petitioner was wrongly given the bonus increment, as the said increment is applicable only to those, who stagnated in the same post for 30 years and the petitioner, having received promotion as High School Headmaster and relinquished it for his own accord, is not eligible for any bonus increment. He further contended that any subsequent clarification issued to the Government Order is only through letters of the concerned Department and not through another Government Order and the submission made in that regard has no substance.

8. Mrs.P.Kavitha, learned Government Advocate strenuously put forth her contention to the effect that the judgment relied upon by the petitioner cannot be unilaterally applied to all the cases and he, being a Group-B employee, would not be entitled to any benefits and in support of her contention, she also produced the extract of the Service Register in respect of the petitioner in order to disprove the submission of the learned counsel for the petitioner that the petitioner falls under Group C category. She further argued that the excess amount disbursed to the petitioner was a public money, which was sought to be recovered and the wrong fixation of amount was set right.

9. Heard the learned counsel for the respective parties and perused the material documents available on record.

10. It is not in dispute that the petitioner initially joined the post of School Assistant Teacher and though he was offered the promotion of High School Headmaster, he was not willing to accept the offer. The petitioner was given the bonus increment with realizing the fact that he was not actually entitled to it and admittedly, he does not fall under Group-C or Group-D category. The Government Order granting bonus increment has to be read as a whole and not in isolation according to the whims and fancies of the petitioner, as public money cannot be disbursed erroneously to any person, who is not entitled to it, as rightly stated by the 2nd respondent.

11. Both the parties relied upon the judgment of the Apex Court, particularly paragraph 18 in State of Punjab and Others vs. Rafiq Masih (Whiter Washer) and others (supra), which holds as under:

"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 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."

12. It is pertinent to mention here that each case has got to be dealt with independently and as the petitioner is a Group-B employee, as could be seen from the Service Register produced by the 2nd respondent, recovery can be effected from the petitioner, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. Even assuming for the sake of argument that the recovery is impermissible, at no stretch of imagination, it can be said that it could be counted for any terminal benefits, as it would pave way to perpetuate illegality to the erroneous order granting benefits. Even though learned counsel for the petitioner cited a judgment of this Court in the case of D.Palavesamuthu vs. Tamil Nadu Administrative Tribunal, Chennai and others, reported in (2006) 1 MLJ 143 to impress upon this Court that the petitioner should not be made to suffer for the mistake committed by the Department and their Officers and he should not be penalized after a lapse of number of years, in the light of the judgment of the Apex Court (White Washer case cited supra), the petitioner cannot be termed as a Group-C or Group-D employee, as he was drawing Rs.6,500/- and above and not entitled to any benefits. Therefore, this Court is of the view that the relief sought

for by the petitioner cannot be granted and the Writ Petition is liable to be dismissed.

13. Accordingly, this Writ Petition is dismissed as misconceived and the petitioner is not entitled to any arrears. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

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M.M.R.Government High School,
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Nagapattinam District.

+1cc to Mr.S.N.Ravichandran, Advocate SR.29561
+1cc to the Government Pleader SR.29507

W.P.No.38645 of 2005

AJS(CO)
CB(15/12/2020)

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