



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.12786 of 2016

and

W.M.P.Nos.11184, 11185 & 38480 of 2016

C.Madayyan

...Petitioner

Vs

1. The Director of School Education,
DPI Complex,
College Road,
Nungambakkam,
Chennai.
2. The Joint Director of School Education,
DPI Complex,
College Road,
Nungambakkam,
Chennai.
3. The Chief Educational Officer,
Salem.
4. The Headmaster,
Govt. Hr. Secondary School,
Mettur Dam - 1,
Salem District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records on the file of the 3rd respondent in connection with his proceedings in Na.Ka.No. 18886/P1/2012 dated 02.12.2015 and quash the same directing the respondents to rectify the pay anomaly on par with Junior K.Saravanan and granting increment in accordance with (i) G.O.Ms.No.210 P & AR dated 11.03.1987; (ii) Govt. Letter P2 AR Dept. dated 28.09.1999; (iii) Govt. Letter No.23373/3/2011-2 dated 09.08.2011; (iv) Govt. Letter No. 7296/S/2012-1 P & AR dated 14.05.2012; (v) G.O.Ms.No.237 Finance (Pay Cell) Dept. dated 22.07.2013 with all arrears.



For Petitioner : Mrs.T.Aananthi

For Respondents : Mr.K.V.Sajeev Kumar
Government Counsel

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ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein is a Tamil Pandit, who had retired from services on 30.06.2010. After about 7 years, through the impugned order dated 02.12.2015, the third respondent herein had proposed for recovery of certain excess increment allegedly paid to the petitioner herein during his service. Aggrieved against the order of recovery, the present writ petition has been filed.

3. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has categorically held that recovery from retired employees, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

"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.



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(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. Admittedly, the present impugned recovery is sought to be made from the retired employee after a period of 7 years and the reason assigned in the impugned order does not implicate the mistake on the part of the petitioner herein. As such, the order of recovery itself cannot be sustained.

5. The learned counsel for the petitioner submitted that there is a pay anomaly in connection with his junior K.Saravanan in granting increments and therefore, he seeks for rectification of the pay anomaly, for which purpose, the petitioner herein had made representation, which is claimed to be under consideration by the respondents herein.

6. The issue with regard to rectification of pay anomaly is a different cause of action, which cannot be joined with the present cause of action for recovery. However, by taking into account the fact that the petitioner's grievance is under consideration by the respondents and his representations in this regard are also pending, it is open to the petitioner to workout his remedies with regard to the pay anomaly in accordance with law.

7. However, insofar as the impugned order of recovery is concerned, the same cannot be sustained, in view of the categorical pronouncement of the decision in White Washer's case (supra).

8. Accordingly, the impugned order passed by the third respondent dated 02.12.2015 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-)

// True Copy//

Sub Assistant Registrar

hvk



To

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AK-II (CO)
SU (04/08/2021)