IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.03.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.13630 & 13631 of 2008

W.P.No.13630 of 2008:

1.R.Masilamani (Deceased)
2.M.Meenatchi
(P2 substituted as LR vide order dt.
17.9.2020 in WMP.No.27319/2019) ... Petitioner

Vs.

1.The Accountant General (A&E)
Accountant General Office
No.261 Anna Salai
Teynampet, Chennai - 18.

2.The Assistant Elementary School Officer,
Valangaiman, Thiruvarur District. ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Declaration declaring that the recovery proceedings of the Accountant General through Additional Sub Treasury Officer, Valangaiman dated 14.04.2001 as declared null and void, consequently direct the first respondent to refund the recovered amount from P.P.O.No.TS5795 (A 44500/A891 and refix the pensionary benefits based on G.O.Ms.No.200, dated 18.05.1999 in the cadre of retired Headmaster on the basic scale of Rs.8000-275-13,500/- within a date to be fixed by this Court.
[Prayer amended as per order dt. 05.09.2008 in M.P.No.1 of 2008 in WP.No.13630 of 2008]

W.P.No.13631 of 2008:

V.Viswanathan ... Petitioner

Vs.

The Accountant General (A & E)
Accountant General Office
No.261 Anna Salai,
Teynampet, Chennai - 18. ... Respondent

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to pay the enhance amount to the petitioner in the scale of (Rs.6500-200-10,500/-) instead of Rs.5,300 - 8,300/- at 2650/- based on G.O.Ms.No.200, Finance dated 01.04.1999 and pay all pensionary benefits based on the representations given by the petitioner on 09.01.2008.

[In both WPs.]

For Petitioner : Mr.A.R.Nixon

For 1st Respondent : Mr.P.Mano Ranjan
For Mr.T.Ravikumar
Standing Counsel

For 2nd Respondent : Mr.S.Suresh Kumar
Government Advocate

COMMON ORDER

Since the issue raised in both the writ petitions is one and the same, with the consent of the learned counsel appearing for the parties, these writ petitions were heard together and are disposed off by this common order.

2.In both the writ petitions, the respective original writ petitioners were erstwhile Secondary Grade Teachers and subsequently, promoted as Elementary School Headmasters and in that capacity, they retired from service on 31.08.1987 and 31.10.1985 respectively.

3.Insofar as W.P.No.13630 of 2008 is concerned, during the pendency of the writ petition, the retired Teacher died, therefore, his wife is impleaded as party petitioner.

4.These Teachers, at the time of retiring, as stated above, though worked as Elementary School Headmasters, they received the pay of Secondary Grade Teacher (Special Grade) pay, which is nothing but Rs.5,900-200-9,900/- and also received a duty pay for the post they held as Secondary Grade Headmasters.

5.It is to be noted that, during that period i.e., before 01.06.1988, there was no separate pay scale for Elementary School Headmaster and the pay scale which are available for the Secondary Grade Teacher alone was the pay scale for the Elementary School Headmaster also apart from the duty pay.

6.Since these two petitioners at the time of retirement were working as Elementary School Headmasters and on superannuation, retired from service in the year 1987 and 1985 respectively, they were never worked as Elementary School Headmaster with different pay scale for such post which came into effect only from 01.06.1988.

7.However, unmindful of the said fact, it seems that, after the retirement of these Teachers, the pension proposal was considered and accordingly pension was fixed by taking into account the Special Grade Pay Scale for Headmaster of Elementary School i.e., Rs.8,000-275-13,500/-, instead of Special Grade Secondary Grade Teacher pay i.e., Rs.5,900-200- 9,900/-.

8.Therefore, there had been an excess payment for these Teachers and therefore, the said payment was directed to be recovered by the orders impugned passed by the office of the first respondent or his subordinates and in this regard, recovery was started to be effected and therefore, challenging the same, the present writ petitions have been filed.

9.Heard Mr.A.R.Nixon, learned counsel appearing for the petitioners, who would submit that, the said fixation was made only by the respondents where, these petitioners/retired Teachers had been paid the pension by taking into account the fixation of pay for Elementary School Headmasters and the same cannot be recovered back after their retirement from the pension and in this context, he would also submit that, one of the employee's wife is now contesting the case, therefore, from her no recovery could be made as she would be getting only a family pension, therefore, such recovery is wrong, he contended.

10.In this regard, the learned counsel would also submit that, the Government Order in G.O.Ms.No.200 dated 18.05.1999, as quoted by the respondents, for passing the impugned order of recovery is not related to the case of the petitioners, therefore, by wrongly quoting the said Government Orders, they ought not to have passed these impugned orders for recovery of the alleged excess payment of pension, therefore, the learned counsel seeks indulgence of this Court.

11.However, Mr.P.Mano Ranjan, learned Standing Counsel appearing for the first respondent has relied upon the following averments made in the counter affidavit.

> "6.Hence, it is submitted that as per the clarification of Government, Secondary Grade Teachers who have functioned as Headmasters and were in receipt of duty allowance and retired before 1.6.88 are entitled to have their pension received in Secondary Grade Teacher scale of pay of Rs.4500-125-7000 (ordinary), 5300-150-8300 (Selection Grade) and 5900-200-9900 (Special Grade) as the case may be, and not

in the scale of pay relevant to that of Headmaster of Elementary School.

7.It is further submitted that the petitioner was holding the post of Primary School Headmaster prior to his retirement on 31.08.87. The revised scale of pay for the post of Secondary Grade Assistant (Special Grade) is 5900-200-9900.

8.Contrary to the clarification of Government in letter No.60024/CMPC/2000-1 dated 18.9.2000, the revised pension of the petitioner has been fixed by the Departmental officer at Rs.3940/- in the scale of pay applicable to the Special Grade Headmaster Elementary School i.e. 8000-275-13500, instead of fixing the pension at Rs.2905/- (i.e.) @ 50% of the minimum of the scale of pay of 5900-200-9900 applicable to Special Grade Secondary Grade Teacher.

9.However, it is submitted that this Respondent office has no opportunity to raise any objection but the Second Respondent had detected and objected to the incorrect revision of pension from 1.4.99 and had adjusted the recovery of excess paid pension while revising the pension in terms GO Ms.No.449 dated 12.10.99.

10.It is also submitted that as per Article 58A of Tamil Nadu Financial Code inserted through G.O.Ms.No.702 dated 7.10.88, Government dues involving over payment of pension/Family Pension can be recovered from DA/ADA on Pension/Family pension without the consent of pensioner/family pensioner."

12.By relying upon these averments, the learned counsel appearing for the first respondent would submit that, prior to 01.06.1988, there were no separate pay scale for Elementary School Headmaster and only the pay scale in three stages i.e., ordinary Grade, Selection Grade and Special Grade for Secondary Grade Teacher alone was paid to them even though they are promoted or given the post of Elementary School Headmaster.

13.The separate pay scale system for Elementary School Headmaster had come only from 01.06.1988 and these petitioners well before 01.06.1988 since retired from service on superannuation in 1987 and 1985 respectively, certainly they would not be entitled to get any pay as per the Pay Scale Fixation for Elementary School Headmasters with effect from 01.06.1988.

14.Correspondingly, they are also not entitled to get pensionable benefits by taking into account the pay scale meant for Elementary School Headmaster i.e., Rs.8000-275-13500/-. However, without noticing this since the pensionable benefits has already been fixed in respect of these two employees/Teachers wrongly by taking into account the Special Pay payable to the Elementary School Headmaster that was a wrong fixation. Therefore, the excess amount paid for certain period to these retired Teachers had to be necessarily recovered. Therefore, the said amount were sought to be recovered through the impugned orders and pursuant to which, the amount also been recovered already.

15.Therefore, the learned Standing Counsel appearing for the first respondent would submit that, the impugned orders are sustainable and the petitioners are not entitled to get back the recovered amount from them.

16.The said position has also been reiterated by Mr.S.Suresh Kumar, learned Government Advocate appearing for the second respondent.

17.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

18.As has been rightly pointed out by the learned counsel appearing for the respondents especially the first respondent, the pay scale which meant for Secondary Grade Teacher prior to 01.06.1988 alone was paid to the Elementary School Headmasters also as there was no separate pay scale payable to them.

19.The maximum pay i.e., Special Grade Secondary Grade Teacher was Rs.5,900-200-9,900/- till 31.05.1988 and that might have been revised only after 01.06.1988. However, the fact remains that, these writ petitioners have retired from service either in 1987 or in 1985, therefore, well before 01.06.1988 since these writ petitioners retired from service, they are not entitled to get pensionable benefits being calculated by taking into account the scale of pay of Special Grade Elementary School Headmasters, i.e., Rs.8000-275-13,500/-.

20.If that is so, based on such Special Grade Elementary School Headmaster Pay, if any pension is calculated and fixed on these retired Teachers and based on which, excess amount had been paid, certainly, the respondents are entitled to recover the same, which they have done rightly through the impugned orders and it is submitted that, already the recovery had been effected.

21.Therefore, this Court feels that, the said move on the part of the respondents to recover the said amount excessively paid to these petitioners cannot be said to be infirm and therefore, the challenge made under these writ petitions would not be sustained. Accordingly, both the writ petitions fail, hence, they are liable to be dismissed, accordingly are dismissed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Accountant General (A&E)
Accountant General Office
No.261 Anna Salai
Teynampet, Chennai - 18.

2.The Assistant Elementary School Officer,
Valangaiman,
Thiruvarur District.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No. 13114
+2cc to Mr.T.Ravikumar, Advocate, S.R.No. 12255
+1cc to the Government Pleader, S.R.No. 12776

W.P.Nos.13630 & 13631 of 2008

RLD(CO)
GN(13/07/2021)