IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.22330 of 2019
and
W.M.P.No.21643 of 2019

A.James Jayaraj ... Petitioner

Vs.

1.The Accountant General,
(Accounts and Entitlement)
Tamil Nadu,
361, Annasalai, Teynampet,
Chennai – 600 018.

2.The Assistant Treasury Officer,
Sub Treasury Office,
Gudiyatham, Vellore District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order in Pro.Pa.Ve.121/16/C dated 02.08.2017 of the Second Respondent, to quash the same and issue consequential directions to the Respondents to refund the amounts recovered, if any, to the petitioner and on that basis also grant revision of his pension as Special Grade Head Master in accordance with Government of Tamilnadu, Ministry of Finance, Letter No.51051/Pay/cell/2009-1 dated 06.10.2009 and Govt.Letter No.14483/CMTC/2011-1 dated 05.01.2012 with all consequential benefits.

For Petitioner : M.Ravi

For R1 : Mrs.Hema Muralikrishnan
Senior Standing Counsel

For R2 : Mr.K.Tippu Sultan
Government Advocate

ORDER

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

2. 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.
>
> (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."

3. In the present case, the petitioner herein had retired from his services on 31.07.1987, when he was serving as a Primary School Headmaster. The reason assigned by the respondent in the impugned order dated 02.08.2017 is that, owing to G.O.Ms.No.235, dated 01.06.2009, the petitioner had been paid excess salary, while the salaries were revised from 01.01.2007 to 30.06.2017 and therefore, the excess amount of Rs.3,69,318/- was directed to be recovered from the petitioner.

4. It is now brought to the notice of this Court that pursuant to the impugned order dated 02.08.2017, the respondents have recovered a part of the amount mentioned in the impugned order. By applying the ratio laid down by the Hon'ble Supreme Court in the White Washer's case (supra), the impugned order of recovery itself cannot be sustained and consequently the installments already recovered, pursuant to the impugned order, requires to be refunded to the petitioner.

5. The petitioner herein has also sought for a consequential prayer seeking for revision of the pension as a Special Grade Headmaster, in accordance with the Government Letters dated 06.10.2009 and 05.01.2012.

6. This Court is of the view that such cause of action requires to be independently dealt with by the official respondents and if the petitioner is granted liberty to ventilate his grievances through a fresh representation, with a consequential direction to the respondents to consider the same within a stipulated time, the ends of justice could be secured.

7. In the light of the above observations, the impugned order passed by the second respondent herein dated 02.08.2017 is quashed. In view of quashing of the impugned order, the respondents are directed to refund any of the installments recovered, pursuant to the impugned order dated 02.08.2017, to the petitioner herein atleast within a period of 4 weeks from the date of receipt of a copy of this order.

8. Insofar as the petitioner's claim for revision of his pension is concerned, he is granted liberty to make a fresh representation to the concerned respondent seeking for such revision and on receipt of the same, the respondent shall consider it, in the light of Government Letter No.51051/Pay Cell/200-1, Ministry of Finance, dated 06.10.2009 and Government Letter No.14483/CMTC/2011-1 dated 05.01.2012 and pass appropriate orders on its own merits and in accordance with law, within a period of 4 weeks from the date of receipt of such representation.

9. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Accountant General,
(Accounts and Entitlement)
Tamil Nadu,
361, Annasalai, Teynampet,
Chennai - 600 018.

2.The Assistant Treasury Officer,
Sub Treasury Office,
Gudiyatham, Vellore District.

+1cc to M/s.Hema MuraliKrishnan, SC Advocate, S.R.No.35114
+1cc to the Government Pleader, S.R.No.35604

W.P.No.22330 of 2019
and
W.M.P.No.21643 of 2019

SSI(CO)
SB(19/08/2021)