IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE
AND
The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.27148 of 2019
and W.M.P.No.26532 of 2019

V.Tamilalagan .. Petitioner

-vs-

1. The Registrar General,
   High Court of Madras,
   Chennai 600 104.

2. The District Judge cum Chief Judicial
   Magistrate of the Nilgiris,
   Udhagamandalam, The Nilgiris District.

3. The Judicial Magistrate,
   Pandalur, Nilgiris District,
   Nilgiris - 643 233. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to the order in Pro.A.No.284/2018, dated 16.08.2018 and Pro.A.No.284/2017 dated 15.02.2019 and to quash the same in so far as it relates to the petitioner and further direct the respondents to grant Special Grade Pay and pay fixed prior to the impugned order to refund the recovered amount if any to the petitioner.

For Petitioner : Mr.K.V.Sajeev Kumar

For Respondents : Mr.Karthik Ranaganathan

ORDER

(Made by The Hon'ble Chief Justice)

The petitioner is engaged as an employee in the District Judiciary.

2. In August, 2014 the petitioner was promoted to the post of Reader Selection Grade despite it being noticed that it was not a promotional post. The relevant letter of August 22, 2014 gave the petitioner the benefit of the Reader Selection Grade post but by making him aware that the Reader post was not directly promotional. In a sense, the petitioner was put on notice that the pay band offered to the petitioner was likely to be revised, particularly if there was any objection from the auditors.

3. By a letter dated February 15, 2019 the petitioner has been informed that the Grade Pay offered to the petitioner was Rs.4,200/- per month but the Grade Pay to which the petitioner was entitled was Rs.2,800/- per month. The employer, thus, required the petitioner to refund the additional amount that had been mistakenly paid to the petitioner.

4. The petitioner says that the demand is liable to be set aside because of the principles laid down in judicial pronouncements, particularly the judgment reported at (2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih).

5. According to the petitioner, broadly speaking, the principles that have been enunciated may be summarised thus: that a subsequent deduction cannot be made from low-level employees; that a huge amount should not be required to be repaid or deducted on the eve of retirement or out of retirement benefits; claims of excess amounts having been paid more than five years back should not be considered for repayment; and, that if the concerned employee is not found to have induced the employer to commit the mistake, the employee should not be required to repay the additional sum.

6. There is first the principle that no one should be allowed to unjustly enrich himself. Once it is found that the petitioner was not entitled to the money, allowing the petitioner to retain the money would amount to unjust enrichment on the part of the petitioner. Thus, the general rule is that any payment received in excess of entitlement ought to be refunded. However, such an order of refund is subject to certain accepted exceptions, namely, that the amount demanded should not be so huge as would cause prejudice to the concerned employee. It is also accepted that huge amounts are not permitted to be deducted or required to be repaid on the eve of retirement or several years after the payment has been made or in other deserving cases, particularly, when the employee may not have been at fault for receiving the excess payment.

7. There is nothing in the present case to show that the petitioner induced the employer to make the additional payment. Accordingly, the petitioner gets the benefit of doubt, though it must also be recognised that the employer included the caveat in the letter of August 22, 2014. The demand was made on the petitioner within four years of the arrears payment being released to the petitioner. At the time that the demand was made, the petitioner had more than one year of service left. At any rate, with the State Government having extended the age of retirement, the petitioner still has a year or so to continue in service. Most importantly, the amount does not appear to be so large so as to prejudice the petitioner or cause the petitioner any apprehension that it may be difficult for the petitioner to survive if the deduction is made from petitioner's salary.

8. The exceptions to a general principle should not be given more credence than the principle itself. The principle always remains the overarching consideration, the exceptions are incidental thereto and do not eclipse the principle altogether. In the present case, the quantum of excess payment appears to be Rs.84,000/- or less. This is not a huge amount that the petitioner may be unable to pay over the next year or so of service that the petitioner has left. As long as the money is paid in instalments prior to the petitioner reaching the age of superannuation, the small deduction per month may not really hurt the petitioner. The test in such a case is where the deduction is of such an hefty amount that the petitioner may not

be able to survive with the money available to him after the deduction.

9. Accordingly, W.P.No.27148 of 2019 is disposed of by permitting the petitioner to pay off the amount that the petitioner received in excess, which should not be more than Rs.84,000/-, in such instalments as the petitioner chooses till the date of the petitioner's retirement. It is also made clear that since the petitioner did not induce the employer to make the payment, no interest will be charged on the petitioner if he pays off the same in instalments or otherwise before the petitioner reaches the age of superannuation. If any money remains due and owing from the petitioner at the time that the petitioner reaches the age of superannuation, the petitioner will have to pay interest at the rate of 6% per annum on the amount remaining outstanding as of the date of his retirement to be reckoned from the date of his retirement and to be deducted from his retiral dues. The relevant judgeship must ensure that no advance payments are received by the petitioner before the dues are cleared.

10. The deduction should begin from the month of May or June, 2021. The exact amount due should be informed to the petitioner by the employer within four weeks from date.

11. There will be no order as to costs. Consequently, W.M.P.No.26532 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

SRA

To

1. The Registrar General,
   High Court of Madras,
   Chennai 600 104.

2. The District Judge cum Chief Judicial
   Magistrate of the Nilgiris,
   Udhagamandalam, The Nilgiris District.

3. The Judicial Magistrate,
   Pandalur, Nilgiris District,
   Nilgiris - 643 233.

+1cc to Mr.K.V.Sajeev Kumar, Advocate, S.R.No.23346

W.P.No.27148 of 2019
and W.M.P.No.26532 of 2019

GPL(CO)
TE (27/04/2021)