



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD)No.21607 of 2018

and

W.M.P. (MD) .Nos.19515 of 2018 and 11157 of 2019

Rajasingsh

... Petitioner

Vs.

1.The Accountant General (Accounts & Entitlements),
381, Anna Salai,
Chennai 600 018.

2.The Treasury Officer,
District Treasury,
Thoothukudi.

3.The District Educational Officer,
District Educational Office,
Thoothukudi.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order in Na.Ka.No.9808/2018/J1, dated 08.10.2018 on the file of the second respondent and quash the same.

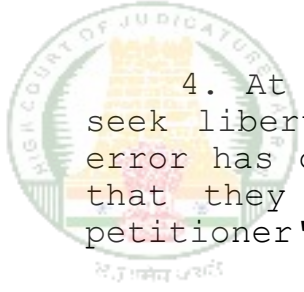
For Petitioner : Mr.Vinoharan
for Mr.G.Prabhu Rajadurai
For R1 & R2 : Mr.P.Gunasekaran
For R3 : Mr.A.K.Manikkam
Special Government Pleader

O R D E R

Heard Mr.Vinoharan, learned counsel for the petitioner, Mr.P.Gunasekaran, learned counsel for R1 and R2 and Mr.A.K.Manikkam, learned Special Government Pleader for R3.

2. The petitioner, aged 89 years, challenges an order dated 08.10.2018, seeking to recover certain amounts that have ostensibly and allegedly, been paid to him erroneously during his service as a Hindi Pandit in the Karapettai Nadar High School, Thoothukudi.

3. The impugned order of recovery has neither been preceded by notices seeking to recover amounts paid to the petitioner prior to his superannuation in the year 1989 nor orders of re-fixation of his pay. The orders are thus liable to be set aside simply for the violation of principles of natural justice.



4. At this juncture, learned counsel for the respondents would seek liberty to pass orders of re-fixation. According to them, an error has crept into the fixation of scale of pay of the petitioner that they seek to correct now, more than three decades after petitioner's retirement.

5. Reliance is placed upon a judgment of the Hon'ble Supreme Court in the case of *Union of India and others vs. Shri Bhanwar Lal Mundan* (2013(12) SCC 433). The facts of this case are different and distinguishable. In that matter, an order has been passed by the Central Administrative Tribunal, quashing an order of the competent authority refixing the pay of the employee prior to his retirement and directing the recovery of the amount paid.

6. The order of the Central Administrative Tribunal was challenged before the Division Bench of the Rajasthan High Court and the order of the High Court carried in further appeal before the Hon'ble Supreme Court. The order of the Tribunal holding that the fixation of pay in that case was erroneous was confirmed and the recovery set aside, based on the ratio of an earlier judgment of the Hon'ble Supreme Court in *Sahib Ram v. State of Haryana* (1995 Supp (1) SCC 18), and several other judgments. There had been a violation of the principles of natural justice in that case as well.

7. In the present case, the petitioner had retired from service as early as in 1989, 32 long years ago. The State has availed his services and fixed his pay accordingly. He has been receiving benefits based upon such pay since his superannuation in 1982. There is no justification that is provided in regard to why the respondents have tarried three decades before issuing the impugned recovery notices.

8. The ratio of the celebrated case of *State of Punjab and others etc., vs. Rafiq Masih (White Washer) etc.*, (2015 (4) SCC 334) holding that recovery cannot be resorted to beyond a period of five years from the alleged offending event is thus applicable on all fours to the present matter. Equally so, and since recovery is a consequence of re-fixation, it follows that an order of re-fixation must be passed in compliance with the principles of natural justice, within five years from the alleged error, and prior to recovery being attempted.

9. It militates against the conscience that a citizen, a super senior at that, aged more than 90 years should be subjected to litigation at this stage of his life. If the State believes that it has committed an error in fixing his scales of pay, let the delinquent officials who committed such mistake be brought to book for this error.

10. The request of the State to refix his pay is denied categorically and this Writ Petition is allowed with costs of Rs.10,000/- payable to the petitioner by the respondents within a



period of four weeks from uploading of this order in the official website of this Court. Connected writ Miscellaneous Petitions are closed.

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// True Copy //

Sd/-

Assistant Registrar (AD-II)

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Accountant General (Accounts & Entitlements),
381, Anna Salai,
Chennai 600 018.

2.The Treasury Officer,
District Treasury,
Thoothukudi.

3.The District Educational Officer,
District Educational Office,
Thoothukudi.

+1 CC to M/s.SPL GP (SR-40444[F] dated 27/12/2021)

Order made in

W.P. (MD) No.21607 of 2018

Dated:

23.12.2021

BK (CO)

GC (31.01.2022) 3P 5C