



W.P.No.28521 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.28521 of 2022
and
W.M.P.No.27832 of 2022

Dr.B.Chithra

... Petitioner

Vs.

1.The Secretary to Government of India,
Ministry of Education,
Government of India, New Delhi.

2.The Registrar,
Pondicherry University,
Pondicherry.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in its proceedings PU/ESTT/NT 10/2022-23/151 dated 03.08.2022 and quash the same and consequently refrain the respondents from effecting any recovery from the terminal benefits payable to the petitioner.



W.P.No.28521 of 2022

For Petitioner : Mr.V.Vijayashankar

For Respondents : Mr.T.V.Krishnamachari
Standing Counsel
for R1

Mr.R.Viduthalai
Senior Counsel
for Mrs.A.V.Bharathi
for R2

ORDER

This Writ Petition has been filed challenging the order dated 03.08.2022 passed by the second respondent University under which the second respondent University has directed the petitioner to pay the excess amount of Rs.3,20,511/- together with interest, which the second respondent claims, was received by the petitioner from the Indian Maritime University (IMU) where she was deputed, eventhough, for the very same period for which the said payment was made, the petitioner has received the salary from the second respondent University.

2. According to the second respondent University, the amount of Rs.3,20,511/- received by the petitioner is a double payment and under those circumstances, the impugned order dated 03.08.2022 has been passed.



WEB COPY



W.P.No.28521 of 2012

3. The petitioner has challenged the impugned order on the following grounds:

The Indian Maritime University (IMU), the place of deputation, has issued an appointment order dated 24.08.2012 under which the petitioner was appointed as the Controller of Examinations in the Indian Maritime University (IMU) in the pay band of Rs.37400-67000 with G.P. of Rs.10000/- on deputation for a period of five years from the date of joining or until she attains the age of sixty two years whichever is earlier.

4. According to the petitioner, the sum of Rs.3,20,511/- was paid by the Indian Maritime University (IMU) as compensation due to the fact that eventhough the appointment order dated 24.08.2012 stipulated that the petitioner will work in the said University for the period of five years, she was compelled to join her parent University viz., the second respondent herein with immediate effect, based on their Office Order dated 05.08.2013.

5. According to the petitioner, since the petitioner had been repatriated back to the University viz., the second respondent herein, within



a period of one year, by calculating the notice period of three months, the

Indian Maritime University (IMU) has paid a compensation of Rs.3,20,511/- to the petitioner.

6. The petitioner has also filed a letter dated 26.03.2015 issued by the Indian Maritime University (IMU), under which the Indian Maritime University (IMU) has clarified to the second respondent University that the sum of Rs.3,20,511/- equivalent to the three months salary was paid to the petitioner as compensation in lieu of the three months notice period as she was repatriated summarily by the second respondent University.

7. Under the aforementioned circumstances and also on the ground of laches, the petitioner has challenged the impugned recovery order issued by the second respondent University dated 03.08.2022.

8. A Counter Affidavit has also been filed by the second respondent University denying the allegation of the petitioner. According to them, the Writ Petition is not maintainable on the ground that Indian Maritime University (IMU) is not made a party respondent in this Writ Petition as



they are a necessary party for the effective adjudication of this Writ Petition.

WEB COPY

Apart from questioning the maintainability of this Writ Petition, on the aforementioned ground, the respondents have stated that the petitioner cannot draw two salaries, one from the Indian Maritime University (IMU) and the other from the second respondent University, which is her parent University. Having received the salary from the second respondent University for the said period, the question of receiving the salary for the very same period from the Indian Maritime University (IMU), which is the place of the petitioner's deputation, is illegal.

9. According to the second respondent University, the petitioner was deputed in the Indian Maritime University (IMU) only for a period of one year with effect from 12.09.2012 and therefore, the question of payment of any compensation will not arise. They have also contended that the Indian Maritime University (IMU) cannot classify the said amount as a compensation as there was nothing to be compensated in view of the fact that the second respondent University had deputed the petitioner to the Indian Maritime University (IMU) only for a period of one year. It is also contended by the second respondent University that the Indian Maritime



University (IMU) is duty bound to give notice to the second respondent

University referring the notice period and must have informed them before making any payment to the petitioner.

10. According to the second respondent University, the petitioner ought to have informed the second respondent University before collecting the payment from the Indian Maritime University (IMU). Therefore, according to them, the payment received by the petitioner amounting to Rs.3,20,511/- from the Indian Maritime University (IMU) is illegal.

11. In so far as the contention of the petitioner that the impugned recovery order issued has to be quashed on the ground of laches is concerned, the respondents have stated that they are at liberty to deduct the same from and out of the terminal benefits payable to the petitioner and therefore, there is no illegality.

12. Heard Mr.V.Vijayashankar, learned counsel for the petitioner and Mr.T.V.Krishnamachari, learned Standing Counsel for respondent No.1 Mr.R.Viduthalai, learned Senior Counsel representing Mrs.A.V.Bharathi for



respondent No.2.

WEB COPY

13. Learned counsel for the petitioner drew the attention of this Court to various documents filed along with this Writ Petition in support of the petitioner's contention and also has relied upon the following Authorities:

a) A Division Bench Judgment of this Court dated 10.06.2008 in the case of ***P.Lingan Vs. The Union of India and others*** reported in **2008 (5) MLJ 1331**;

b) A Decision of the Honourable Supreme Court in the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in **2015 (4) SCC 334**;

c) A Judgment of the Honourable Supreme Court in the case of ***Sahib Ram Vs. State of Haryana and Others*** reported in **1995 Supp (1) SCC 18**.

14. Similarly, Mr.R.Viduthalai, the learned Senior Counsel appearing for the second respondent University drew the attention of this Court to the following Authorities:

a) ***Vice-Chairman and Managing Director, A.P.Sidc Ltd and Another Vs. R.Varaprasad and Others*** reported in **2003 (11) SCC 572**;



b) ***Ranjan Kumar and Others Vs. State of Bihar and Others***

reported in ***2014 (16) SCC 187***.

WEB COPY

15. Learned Senior Counsel appearing for the second respondent University also drew the attention of this Court to the documents filed in the typed set of papers filed by the second respondent University dated 07.11.2022. He would reiterate the contents of the Counter Affidavit filed by the second respondent University before this Court. To sum up his submissions, he would state as follows:

a) The petitioner has received double payment towards salary. Having received the salary from the second respondent University for a particular period, the petitioner has received the salary for the same period from the Indian Maritime University (IMU) being the place of his deputation without seeking permission of the second respondent University which according to him is *per se* illegal;

b) The Writ Petition is not maintainable on the ground of non joinder of necessary party viz., the Indian Maritime University (IMU) who has paid the sum of Rs.3,20,511/- to the petitioner;



WEB COPY



W.P.No.28521 of 2018

c) There is no laches on the part of the second respondent University to recover the double payment received by the petitioner towards salary as they have the legal right to deduct the excess payment made to the petitioner from and out of his terminal benefits;

d) The petitioner has not suffered any loss and therefore, the question of payment of compensation by the Indian Maritime University (IMU) will not arise.

16. The petitioner was deputed to the Indian Maritime University (IMU) only for a period of one year and having been repatriated one month before the actual date of her tenure, she has not suffered any loss that too when the second respondent University has already paid her salary. Therefore, the question of compensation will not arise.

17. The only issues that arise for consideration in this Writ Petition is whether the payment made by the Indian Maritime University (IMU) to the petitioner amounting to Rs.3,20,511/- is a compensation amount or is a salary and whether the said amount paid by the Indian Maritime University (IMU) to the petitioner is legal or not.



WEB COPY

18. Admittedly, the petitioner was deputed to the Indian Maritime University (IMU) by the second respondent University initially for a period of one year. The Indian Maritime University (IMU) has also issued a separate appointment order in favour of the petitioner on 24.08.2012 which is also not disputed by the second respondent University. As per the said appointment order dated 24.08.2012, the petitioner has been appointed on deputation basis in the Indian Maritime University (IMU) for a period of five years from the date of joining or until she attains the age of sixty two years whichever is earlier. The petitioner's parent University is the second respondent University who had deputed her to the Indian Maritime University (IMU) and the Indian Maritime University (IMU) has appointed her as the Controller of Examinations in their University.

19. A clarification letter was sought for by the second respondent University from the Indian Maritime University (IMU) with regard to the payment of Rs.3,20,511/- paid to the petitioner by the Indian Maritime University (IMU). By reply dated 26.03.2015, the Indian Maritime University (IMU) has clarified to the second respondent that the said sum



of Rs.3,20,511/- paid to the petitioner which is equivalent to three months salary has been paid as a compensation in lieu of three months notice period as the petitioner was repatriated summarily to the second respondent University which is her parent University.

20. Admittedly, the Indian Maritime University (IMU) has also not taken any steps till date to recover the said sum of Rs.3,20,511/- paid by them to the petitioner, which according to them, is a compensation amount payable to the petitioner in lieu of three months notice period as she was repatriated summarily to the second respondent University.

21. The reply letter dated 26.03.2015 issued by the Indian Maritime University (IMU) clarifying the second respondent University about the nature of payment made to the petitioner is also not disputed in the Counter Affidavit filed by the second respondent University.

22. Both the Universities, viz., the Indian Maritime University (IMU) as well as the Pondicherry University (the second respondent University) are Central Universities. The second respondent University has also not



disputed the appointment order dated 24.08.2012 issued by the Indian Maritime University (IMU) in favour of the petitioner under which she was deputed to their University as the Controller of Examinations for a period of five years from the date of joining or until she attains the age of sixty two whichever is earlier.

23. The petitioner joined the Indian Maritime University (IMU) on deputation from the second respondent University on 12.09.2012. Therefore the period of five years from September, 2012 will come to an end only in September, 2017, but, however, she was repatriated back to the second respondent University within a period of one year instead of five years which was her original period of deputation as per the appointment letter dated 24.08.2012 issued by the Indian Maritime University (IMU).

24. The decision relied upon by the learned counsel for the petitioner also supports the case of the petitioner. In the case of ***State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others*** reported in **2015 (4) SCC 334**, it has been made clear that under the following circumstances, recovery cannot be made from Government employees:



- a) Recovery from the employees belonging to Class-III and Class-IV service (or Group-C or Group-D service);
- b) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery is issued;
- c) 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;
- d) In any other case, where the Court arrives at the conclusion, that the recovery made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would fair outweigh the equitable balance of the employer's right to recover.

25. In the case on hand also the alleged excess payment was made in December, 2014. However, the impugned recovery order has been issued on 03.08.2022 much beyond the period of five years.

26. The Honourable Supreme Court has clearly held that recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued is impermissible



WEB COPY

in law. The Honourable Supreme Court has also given a finding that 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, such a recovery cannot be made. In the case on hand also, the amount involved is Rs.3,20,511/- and for a person who is employed in public service, the said amount is a huge amount and that too when the recovery proceedings have been initiated after a lapse of more than eight years from the date of making the said payment that too when the petitioner is on the verge of her retirement, the question of recovering the said amount from her will be arbitrary and harsh and will far outweigh the equitable balance of the employer's right to recover.

27. The decision of the Honourable Supreme Court in the case of ***Sahib Ram Vs. State of Haryana and Others*** reported in ***1995 Supp (1) SCC 18*** as well as in the case of ***P.Lingan Vs. The Union of India and others*** reported in ***2008 (5) MLJ 1331*** referred to supra, also support the case of the petitioner. In those cases also the Honourable Supreme Court has held that only in cases of misrepresentation, the question of recovery will



WEB COPY

arise. In the case on hand, it is not the respondent's case as seen from the Counter Affidavit that there is misrepresentation by the petitioner from the second respondent University to the Indian Maritime University (IMU) for receiving the compensation amount of Rs.3,20,511/- which is sought to be recovered by the second respondent University under the impugned order.

28. Learned Senior Counsel appearing for the second respondent University has referred to the following Authorities:

- a) *Vice-Chairman and Managing Director, A.P.Sidc Ltd and Another Vs. R.Varaprasad and Others* reported in *2003 (11) SCC 572*;
- b) *Ranjan Kumar and Others Vs. State of Bihar and Others* reported in *2014 (16) SCC 187*.

29. The Decisions relied upon by the learned Senior Counsel appearing for the second respondent University referred to supra has no bearing to the facts of the instant case. The said decisions do not deal with the case where a person has been deputed to another institution.



W.P.No.28521 of 2022

WEB COPY

30. For the foregoing reasons, the impugned order has to be necessarily quashed and the Writ Petition will have to be allowed. Accordingly, the impugned order dated 03.08.2022 is hereby quashed and the Writ Petition is allowed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

17.11.2022

Index : Yes/No
Speaking Order : Yes / No
ab



W.P.No.28521 of 2018

To

1.The Secretary to Government of India,
Ministry of Education,
Government of India, New Delhi.

2.The Registrar,
Pondicherry University,
Pondicherry.



WEB COPY



W.P.No.28521 of 2022

ABDUL QUDDHOSE. J.,

ab

W.P.No.28521 of 2022

**17.11.2022
(1/2)**