BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **28.01.2022**
CORAM:
THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
W.P.(MD)No.5463 of 2018
and
W.M.P.(MD)No.5389 of 2018

Anandasamy ...Petitioner

/Vs./

1.Union of India,
New Delhi,
By its Principal Secretary,
Human Resources Department,
New Delhi.

2.The National Institute of Technology,
Tiruchirappalli,
By its Director,
National Institute of Technology,
Trichy – 15.

3.The Registrar,
National Institute of Technology,
Trichy – 15. ...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent proceedings G1/Pension/2016-2017 dated 24.01.2017, and quash the same as illegal and directing the respondents to refund the already amount recovered to the petitioner.

For Petitioner : Mr.Muthusamundeeswaran
for Mr.S.Muthukrishnan
For R1 : Mr.G.Rajaraman
Central Government Standing Counsel
For R2 & R3 : Ms.J.Maria Roseline

ORDER

Heard Mr.Muthusamundeeswaran, learned counsel for the petitioner, Mr.G.Rajaraman, learned counsel for R1 being Union of India and Ms.J.Maria Roseline, learned counsel for the National Institute of Technology (NIT)/R2 & R3.

2.The petitioner was employed in NIT and retired as Mechanic A-Special Grade on 31.12.2001. He had been in receipt of pension regularly. While so and out of the blue, he received impugned proceedings dated 24.01.2017 proposing to recover certain amounts from him on the basis that 5% of personal pay that had been sanctioned to him as early as in 1999 had been erroneously granted and the pension fixed and granted on the basis of this erroneous sanction is to be refixed and the excess paid, recovered.

3.The petitioner submitted his explanation both on the aspects of substantial delay in the proceedings as well as on the merits of the matter. He pointed out that he was infact entitled to the personal pay and though there was an objection by audit even at that juncture, the College authorities being of the categoric view that the employees were entitled to it, has taken up the matter by the Board of Governors in 2005 itself and had settled the issue in favour of the employees.

4.The excess payments made to the staff members had been adjusted by NIT. The petitioner had drawn attention to the minutes of the meetings of the Board of Governors to buttress his case. He also cited the Central Civil Services (Pension) Rules, 1972, (in short 'Rules') that are specific in regard to non recovery of payment after a long elapse of time, specifically Rule 73 (3) of the Rules, which provides for the right of dues where a government servant has superannuated. Thus, according to the petitioner, there could be no recovery initiated in cases pursuant to superannuation of the employee concerned.

5.Per contra, respondents rely upon a Judgment of the Hon'ble Supreme Court in the case of *High Court of Punjab and Haryana vs. Jagdev Singh* (AIR 2016 SC 3523). In this judgment, the Supreme Court distinguishes the ratio of its earlier judgment in the case of *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer)* (AIR 2015 SC 696), wherein a set of guidelines had been issued in regard to the recovery from various categories of employees.

6.One of the categories enumerated is employees who have retired or those who were due to retire within one year from the order of recovery. In such cases, the Court had categorically stated that no recovery shall be undertaken, as it would result in significant hardship and prejudice.

7.In the case of *Jagdev Singh* (supra), the Court noticed that the exercise of refixation of pay had been undertaken with the officers specifically furnishing an undertaking, while opting for the revised pay scale, that any payment that was made in excess would be refunded by him.

8.Such a situation postulates three events. Firstly, that there was a refixation of pay, secondly, such refixation was simultaneous with the grant of an option to the employee and thirdly that an undertaking was furnished by the employee to refund the amount received by him, if it was found to be excess. None of these events have been transpired in the present case.

9.In fact, the question of an option does not arise as the grant of personal pay has been thrust upon, the eligible employees, in the sense, that the petitioner was never asked as to whether he wished to avail such benefit. That apart, no undertaking has admittedly been taken from him as when a specific query was put to the learned counsel for NIT in this regard, she would fairly confirm this position.

10.Thus, the exceptions as noticed in the case of *Jagdev Singh* (supra) are not applicable in the present case and the petitioner is fully entitled to the benefit of the guidelines set and directions issued *White Washer's* case.

11.In the present case, the refixation is consequent upon a review of the pension case of the petitioner in 2016, 15 years after the retirement of the petitioner on 31.12.2001. The order of refixation is dated 05.08.2016 and the refixation has itself, been effected unilaterally and without any prior notice having been issued to the petitioner.

12.The impugned order is quashed. Any recovery already effected pursuant to the impugned order shall be reversed forthwith and the amount recovered shall be paid back to the petitioner within two weeks from today.

13.It is inconceivable that the petitioner, aged 75 years at the time of filing of this writ petition, should be visited with an order of refixation of pension a decade and a half after his superannuation. If at all there is an error in the computation of pension, it is incumbent upon the employee/audit department to detect the same and refix the benefits in a timely fashion.

14.For the above reasons, I am of the view that the refixation of pay was itself erroneous and grossly belated. This writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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TO:

1.The Principal Secretary,
Union of India,
New Delhi,
Human Resources Department,
New Delhi.

2.The Director,
National Institute of Technology,
Tiruchirappalli,
National Institute of Technology,
Trichy - 15.

3.The Registrar,
National Institute of Technology,
Trichy - 15.

+1 CC to M/s.G.RAJARAMAN, Advocate (SR-3187[F] dated 31/01/2022)

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