IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.4308 of 2020

C.Vasantha ... Petitioner

Vs.

1.The District Adi-Dravidar Welfare Officer,
Collectorate, Cuddalore,
Cuddalore District - 607 001.

2.The Special Tahsildar (Adi Dravidar Welfare),
Vridhachalam,
Cuddalore District - 606 001.

3.The Accountant General,
(Accounts & Entitlements),
Tamil Nadu,
361, Anna Salai,
Teynampet, Chennai 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third respondent in No.P16/3/11620510/ADK/215 dated 23.08.2017 and the consequential order of the second respondent issued in Na.Ka.Aa/135/2017 dated 06.11.2017 and quash the same orders and direct the third respondent to re-fix the petitioner's retirement benefits by granting incentive increment for possession of B.Ed qualification from the date of her initial appointment, namely, 29.11.1999 and consequently disburse her arrears of retirement benefits including refund of recovered DCRG amount of Rs.1,71,767/- with admissible interest for the said belated payment.

For Petitioner : Mr.P.Manojkumar
For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the third respondent in No.P16/3/11620510/ADK/215 dated 23.08.2017 and the consequential order of the second respondent issued in Na.Ka.Aa/135/2017 dated 06.11.2017 and quash the same orders and direct the third respondent to re-fix the petitioner's retirement benefits by granting incentive increment for possession of B.Ed qualification from the date of her initial appointment, namely, 29.11.1999 and consequently disburse her arrears of retirement benefits including refund of recovered DCRG amount of Rs.1,71,767/- with admissible interest for the said belated payment.

2. Heard Mr.P.Manojkumar, learned counsel for the petitioner and

Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents.

3. In the impugned order, it is stated that the incentive increment paid to the petitioner has been sanctioned to the petitioner improperly and hence, the increment so far paid should be recovered. Consequently, a sum of Rs.1,71,767/- alleged to have been the excess payment due to improper sanctioning of special increment was reduced from the terminal benefits payable to the petitioner.

4. There is no fault on the part of the petitioner in getting the sanction of the special increment and it is due to some mistake on the part of the office. The recovery for the mistake committed on the part of the employer cannot be made from a retired employee.

5. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) etc.*** reported in ***(2015) 4 SCC 334*** , has settled the position on this point as below:-

*"**18.** It is not possible to postulate all situation 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 the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) 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.

(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."

6. The petitioner who is a retired employee has suffered reduction without any prior notice and the recovery cannot be made from the petitioner who is retired and who is not responsible for the erratic sanction of the increment. Hence, I feel the impugned order has to be set aside.

7. In the result, this Writ Petition is allowed and the order of the third respondent in No.P16/3/11620510/ADK/215 dated 23.08.2017 and the consequential order of the second respondent issued in Na.Ka.Aa/135/2017 dated 06.11.2017 are set aside and the third respondent is directed to re-fix the petitioner's retirement benefits without deduction and disburse her arrears of retirement benefits inclusive of refund of recovery of Rs.1,71,767/- already made within a period of four weeks from the date of receipt of a copy of this order. No costs.

10.11.2023

Index : Yes
Internet : Yes/No
gsk

To

1.The District Adi-Dravidar Welfare Officer,
Collectorate, Cuddalore,
Cuddalore District - 607 001.

2.The Special Tahsildar (Adi Dravidar Welfare),
Vridhachalam,
Cuddalore District - 606 001.

3.The Accountant General,
(Accounts & Entitlements),
Tamil Nadu,
361, Anna Salai,
Teynampet, Chennai 600 018.

R.N.MANJULA, J.

gsk

W.P.No.4308 of 2020

10.11.2023