IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM :

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.29117 of 2016
and W.M.P.Nos.25163 of 2016 and 5809 of 2017

S.S.Ramanathan .. Petitioner

Versus

1. The Assistant Treasury Officer,
   Neyveli,
   Cuddalore District.

2. The District Educational Officer,
   Cuddalore,
   Cuddalore District.

3. The District Treasury Officer,
   Cuddalore,
   Cuddalore District. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent herein, dated 04.07.2016 and quash the same and consequently, direct the respondent to continue to pay the petitioner's pension as fixed by the 2nd respondent vide proceedings, dated 28.08.2012.

For Petitioner : Mrs.S.Suneetha

For Respondents : Mr.K.Surendar,
Additional Government Pleader

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the first respondent, the Assistant Treasury Officer, Neyveli, Cuddalore district, dated 04.07.2016 and to quash the same and to continue to pay the pension for the petitioner as fixed by the second respondent, the District Educational Officer, Cuddalore by proceedings, dated 28.08.2012.

2. The writ petitioner was originally appointed as B.T. Assistant at High School and was granted with Selection Grade and Special Grade in the post of B.T. Assistant and was subsequently promoted to the post of High School Head Master at Neyveli Lignite Corporation School, Block No.26, Neyveli with effect from 31.10.1988. According to him, the pay scale of B.T. Assistant, Special Grade, was 1160 - 50 - 1460 - 70 - 1950. This was as determined by the Fourth Pay Commission. The corresponding pay, after the introduction of the Fifth Pay Commission, was 2000 - 60 - 2300 - 75 - 3200. The petitioner had retired from service on attaining the age of superannuation on 31.10.1988. He claimed that the Special Grade scale of

pay for B.T. Assistant was the same as ordinary grade scale of pay of High School Head Master.

3. There was a further revision of pay by G.O.Ms.No.234 Finance Department, dated 01.06.2009. A clarificatory letter was issued on 05.01.2012 and it was stated that G.O.Ms.No.234 would be applicable only to Teachers who were awarded Selection Grade / Special Grade prior to 01.01.2006. It was also clarified that the monetary benefits of G.O.Ms.No.234, dated 01.06.2009 would take effect from 01.01.2007 though the calculations would be with effect from 01.01.2006.

4. At this juncture, the impugned order came to be passed, wherein, the first respondent had stated as follows :-

> "*The Pensioner has been paid pension Rs.10500/p.m from 01/01/2007 in the scale of pay 15600-37400 + 5400 and Rs.10650/ from 01/01/2011 in the scale of pay 15600-37400 + 5700.*
>
> *On verification of the pensioners Records, As per the Govt Letter No 87191/PC/2004-01/DT 12/01/2005 the post last held only should taken while fixing the minimum pension as per G.O.200 or G.O. 235(PARA 2VI). In this case, the pensioner retired as High school headmaster*

> *with pay protection of spl Gr, School Assistant. Hence the pension should have been revised only for the minimum pay of High School HM . But the Original pension fixed @ Rs.10500/ instead of Rs.8664/ up to 31/12/2010 and Rs.10650/ instead of Rs.8664/-. This has resulted as Excess Payment from 01/01/2007 to 31/03/2016 Amounting Rs.390663/- made to him as worked out in annexure which is brought to notice for necessary action.*
>
> *The Assistant Treasury Officer, Neyveli is instructed to revised the pension and recover the excess paid pension from the pensioner and report the fact to audit.*"

5. This is dated 04.07.2016. The primary ground taken by the learned Counsel for the petitioner was that this recovery of excess pension paid should have been invoked within a period of five years from the date of superannuation. The order aforementioned was issued nearly after eighteen years from the date of superannuation. In the counter-affidavit filed by the first respondent, it had been stated that the pension had been revised to Rs.10,650/- with effect from 01.01.2011 and the recovery of excess pension paid had been directed. The revision of pension cannot be re-examined by this Court. The respondents have their justification for their revising the pension. But, this Court should necessarily interfere with the recovery of the excess pension paid. Such recovery, if it is done after considerable

period of time, had been termed as "iniquitous" by the Hon'ble Supreme Court.

6. My attention had been drawn to the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.11527 of 2014 arising out of S.L.P(C).Nos11684 of 2012, ***State of Punjab and Ors. etc., Vs. Rafiq Masih (White Washer) etc.***, where, in a batch of Civil Appeals, the Hon'ble Supreme Court of India had examined the very same issue namely, recovery of monetary benefits which were paid excess of their entitlement, but, consequent to a mistake committed by the competent authority and not owing to any misrepresentation made by the employee. In the instant case, there is no charge that the petitioner had misrepresented his scale of pay or that he had benefited with the higher revised pension owing to any fact not disclosed by him. The order impugned shows that the revised pension was calculated consequent to verification of the records of the petitioner herein.

7. The paragraph Nos.2 to 4 of the aforementioned judgment will give the background, on the basis of which, the Hon'ble Supreme Court of India

proceeded to examine the issue. The said paragraphs are extracted as hereunder :-

> "***2.*** *All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay- scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.*
>
> ***3.*** *Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the*

private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.

4. *The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.*"

8. Thereafter, the Hon'ble Supreme Court of India had held as follows :-

"***7.*** *Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when* *this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.*"

9. The Hon'ble Supreme Court of India examined its judgment in ***Syed Abdul Qadir Vs. State of Bihar***[1] and finally, held as follows :-

"***11***....
(i)...
(ii)...
(iii)...

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger.

1 (2009) 3 SCC 475

Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation."

10. The Hon'ble Supreme Court of India again held as follows :-

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

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

> *(iii) 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.*
>
> *(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.*
>
> ***13.** We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."*

11. The same reasoning applies to the petitioner herein. The recovery would be iniquitous. The petitioner, at the time he filed the Writ Petition, was aged 87 years old. This was in the year 2016. As on date, he should be aged 93 years old. It would be extremely iniquitous if recovery is directed. The ratio of the Hon'ble Supreme Court of India is applied to the facts and

circumstances of this case and I hold that the order of the respondents directing recovery of the excess (according to them, the excess amount paid), should be interfered with by this Court.

12. Accordingly, the impugned order is set aside. The respondents are at liberty to pay the revised pension which they continue to pay from 01.01.2011, but, very specifically, they cannot recover what they termed as the "excess pension" paid to the petitioner herein.

13. The impugned order stands quashed. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

1. The Assistant Treasury Officer,
   Neyveli,
   Cuddalore District.

2. The District Educational Officer,
   Cuddalore,
   Cuddalore District.

3. The District Treasury Officer,
   Cuddalore,
   Cuddalore District.

C.V.KARTHIKEYAN, J.

grs

W.P.No.29117 of 2016
and W.M.P.Nos.25163 of 2016 and 5809 of 2017

10.07.2023