



W.P.No.18218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.18218 of 2023
and W.M.P.No. 17410 of 2023

R.Ravindran

... Petitioner

Versus

1.The Principal
Arignar Anna Government Arts College
Namakkal – 637 002

2.The Accounts Officer
State Pay & Account Office
O/o The Accountant General (A&E)
Chennai

3.The Treasury Officers
O/o District Treasury Office
Namakkal

... 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 relating with the order of the 1st respondent made in Na.Ka.No.3027/E/2022 dated 09.03.2023 to recover a sum of Rs.5,82,472/- from the petitioner's gratuity and quash the same as it is arbitrary and illegal as it is against G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018 and in consequence to direct the respondent to release the petitioner's entire gratuity forthwith.



For Petitioner : Mr.S.V.Subramanian
For Respondents : Mr.S. Rajesh
Government Advocate

ORDER

This Writ Petition has been filed to quash the proceedings of the 1st respondent made in Na.Ka.No.3027/E/2022 dated 09.03.2023 to recover a sum of Rs.5,82,472/- from the petitioner's gratuity and consequently to direct the respondent to release the petitioner's entire gratuity forthwith.

2. It is the case of the Writ Petitioner that she was initially appointed as Lab Assistant in the first respondent Government Arts College on 15.07.1986. After 10 years, he was given Selection Grade and got Special Grade after 20 years of service on 10.10.2006 and retired on 31.10.2022 by attaining the age of superannuation. It is his grievance that though he was allowed to retire, the respondents did not settle the retirement dues by stating that the 2nd respondent had made audit objection by letter dated 10.11.2022 and the increment granted as per the additional fitment table was incorrect and thus salary had to be re-fixed on and from 01.01.2006 till his retirement. Subsequent to which, the first respondent re-fixed the salary and



W.P.No.18218 of 2023

increment on and from 16.07.2006 till his retirement vide the order dated 08.03.2023, i.e., his last drawn salary of Rs.70,000/- is reduced to Rs.64,100/- and ordered for recovery of the alleged excess payment made from 01.03.2011 to 31.10.2022, since prior to 01.03.2011, it is only on record. Then, first respondent passed the impugned order on 09.03.2023 for recovery of Rs.5,82,472/- from the petitioner's gratuity. Challenging the same, this writ petition.

3. The learned counsel appearing for the writ petitioner mainly submitted that the Petitioner has received the benefits for more than 10 years. Even assuming that the incentive has been paid wrongly, the same cannot be recovered after 10 years.

6. I have perused the entire materials. It is not disputed that the Petitioner was appointed as Lab Assistant on 15.07.1986. He was given Selection Grade and got Special Grade after 20 years of service on 10.10.2006 and he had retired from service on 31.10.2022.



W.P.No.18218 of 2023

7. At the most, the respondents are entitled to cancel the increment of the petitioner only in respect of the pension alone and they are not entitled to cancel the increment retrospectively. Hence, the recovery ordered stands quashed. Though the increment has sanctioned wrongly and the same has been paid continuously for more than 5 years to the Petitioner, recovery of incentive increment shall not be permissible in view of the decision of the Supreme Court in ***State Of Punjab & Ors vs Rafiq Masih (White Washer)*** [(2015) 4 SCC 334] wherein it is held as follows:

“18. 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.*



W.P.No.18218 of 2023

(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."

10. Such view of the matter, the recovery order passed by the first respondent stands quashed. Accordingly, the Writ Petition stands disposed of. Consequently connected Writ Miscellaneous Petition is closed. No costs.

03.08.2023

dhk
Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No



WEB COPY



W.P.No.18218 of 2023

N.SATHISH KUMAR, J.

dhk

To

1.The Principal
Arignar Anna Government Arts College
Namakkal – 637 002

2.The Accounts Officer
State Pay & Account Office
O/o The Accountant General (A&E)
Chennai

3.The Treasury Officers
O/o District Treasury Office
Namakkal

Order in:
W.P.No.18218 of 2023

03.08.2023