IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5257 of 2017
and
W.M.P.No.5579 of 2017

S.V.Santhi ... Petitioner

Vs.

1.The Commissioner of Treasury and Accounts,
Panakal Building,
Saidapet, Chennai-600 015.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.

3.The Assistant Elementary Educational Officer,
Kodaikanal, Dindugal District,
Dindugal.

4.The Sub-treasury Officer,
Office of the Sub-treasury,
Kodaikanal, Dindugal District. ... Respondents

Prayers : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to continue to pay the pension which was fixed by the 4the respondent vide the proceedings dated 02.11.2011 and to refund to the petitioner the amount which was wrongly recovered from the petitioner's pension account.

For Petitioner : Mrs.S.Suneetha

For Respondents : Mr.Dr.T.Seenivasan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking for a direction to the respondents to continue to pay the pension which was fixed by the 4th respondent vide the proceedings dated 02.11.2011 and to refund to the petitioner, the amount which was wrongly recovered from the petitioner's pension account.

2.The petitioner was originally appointed as Secondary Grade Teacher with effect from 02.01.1981 at CSI Middle School, R.S.Mangalam. Subsequently, she was transferred to CSI Aided Elementary School. Kodaikanal. After completion of 30 years of service, the petitioner retired with effect from 30.11.2004. During her service, the petitioner was granted with selection grade in the year 1991 and special grade with effect from the year 2001. The petitioner's pension was also fixed by the 1st respondent and the petitioner was receiving the pension. In the year 2009, the Government accepted the VI Pay Commission recommendations and accordingly, revised the pay scales of the various Government employees. Accordingly, the teachers' pay scales were also re-fixed, pursuant to the G.O. Ms. No.234, Finance Department, dated 01.6.2009 and G.O. Ms. No.235, Finance Department, dated 01.06.2009.

3.The learned counsel for the petitioner would submit that The said G.O. Ms.No.235, Finance Department, dated 01.06.2009 with reference to paragraph 2(vi) further clarified that the re-fixation would also be applicable to the retired Government employees. The Government further issued a clarificatory letter dated 08.11.2010 clarifying the fact that the persons who had retired prior to 01.01.2006 would be eligible for the re-fixation of pension as per para 2(vi) of G.O.Ms. No.235, dated 01.06.2009. Accordingly, the petitioner's revised scale of pay was also fixed Rs.15600-

39100/-+5700/- as Grade Pay. And also the petitioner's pension was revised by the Sub-Treasury Officer vide proceedings dated 02.11.2011 and the pension arrears and dearness allowance were granted to the petitioner at Rs.1,35,415/- and the petitioner's pension was also revised and re-fixed. Thus, the petitioner was receiving enhanced pension from February 2016. and the petitioner received the pension at the rate of 18,131/-. He would submit that when the petitioner went to receive the pension in the month of March 2016, only a sum of Rs.11,813/- alone was credited to the pension account of the petitioner and there was a deduction of Rs.7,118/- by the Sub-Treasury Officer, Kodaikanal. Thereafter, the petitioner noticed the same to the respondents till date no response from them. Hence, this Writ Petition.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.On a perusal of the documents, it is seen that the petitioner was originally appointed as Secondary Grade Teacher with effect from 02.01.1981. After completion of 30 years of service, the petitioner retired with effect from 30.11.2004. During her service, the petitioner was granted with selection grade in the year 1991 and special grade with effect from the year 2001. In 2009, after the VI Pay Commission, the teachers' pay scales were also re-fixed, pursuant to the G.O. Ms. No.234, Finance Department, dated 01.6.2009 and G.O. Ms. No.235, Finance Department, dated 01.06.2009. The said G.O. Ms.No.235, dated 01.06.2009 with reference to Paragraph 2(vi) clarified that the re-fixation would also be applicable to the retired Government employees. The Government further issued a clarificatory letter dated 08.11.2010 clarifying the fact that the persons who had retired prior to 01.01.2006 would be eligible for the re-fixation of pension. Accordingly, the petitioner's revised scale of pay was also fixed Rs.15600-39100/-+5700/- as Grade Pay and the petitioner's pension was revised. Further, the pension arrears and dearness allowance were granted to the petitioner at Rs.1,35,415/- and the petitioner was receiving enhanced pension from February 2016 at Rs.18,131/-. Without any notice, the pension amount from March 2016 was only a sum of Rs.11,813/- which was credited to the account of the petitioner. There was a deduction of Rs.7,118/- by the respondents. As per the Government letter dated 08.11.2010, the petitioner was extended with appropriate scale of pay from 01.08.2010. The petitioner was awarded with the selection and Special grade scale of pay and also applicable grade pay provided thereunder. The grant of such benefit has been done consequent upon the Government Orders as well as the clarifications in regard to pay rules providing for such revised benefits. As per proceedings of the 4th respondent dated 02.11.2011, the pension has been rightly re-fixed. Thereafter, the respondents recovered the excess amount paid to the petitioner and the same is deducted from the petitioner's pension from March 2016. Following the decision of the Supreme Court as laid in State of Punjab v. Rafiq Masih (Whitewasher's case) reported in 2015 (2) SCC 151, the amount has been paid long back and the excess amount paid cannot be recovered from the petitioner.

Accordingly, this Writ Petition is allowed. Consequently, connected

Miscellaneous petition is closed. No costs.

13.12.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
mps

To

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V.BHAVANI SUBBAROYAN, J,

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