



WP.No.987/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.987/2017 & WMP.No.966/2017

N.Ramasasmy

... Petitioner

Versus

**The Sub Treasury Officer
Sankagiri, Salem District.**

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order of the respondent in Na.Ka.No.1474/2016/As dated 13.10.2016 and quash the same and direct the respondent to refund the amount already recovered from the petitioner with interest.

For Petitioner : Mr.P.Mohanraj

For Respondent : Mr.S.Ravikumar, Spl.GP



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ORDER

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- (1) The writ petitioner, who retired from service on attaining the age of superannuation as Headmaster of Panchayat Union Elementary School at Pallipalayam, Sankari Block in Salem District on 31.07.1990 is before this Court aggrieved by an order, directing recovery of what respondent termed as 'excess pay' to the petitioner herein. This impugned order is dated 13.10.2016 in Na.Ka.No.1474/2016/Aa.
- (2) The brief facts relating to the service of the petitioner is that he was initially appointed on 19.07.1964 in the erstwhile Education Department. He held the post of Headmaster, Middle School on 02.10.1970. This was made a promotion post with effect from 02.10.1970. Those who had been reverted back as Primary School Headmasters or as Secondary Grade Teachers consequent for want of seniority, were provided with protection of their pay even though they were technically posted to a lower post on reversion. This pay protection was granted consequent, according to the petitioner, to the



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orders of the Hon'ble Supreme Court. They continue to receive the pay scale applicable to Middle School Headmasters. The petitioner was also reverted as Primary School Headmaster. He was granted pay protection and continued as Middle School Headmaster pay scale, till his date of retirement in the year 1990. Pension was then determined as per the last drawn pay in accordance with the provisions of the Tamil Nadu Pension Rules.

- (3) By the impugned order, it had been stated that recovery has to be effected from 01.01.2003. A perusal of the impugned order, shows that it has been alleged there has been excess pay granted to the petitioner herein. It had been stated that at the time of retirement, the petitioner was working as Headmaster in Panchayat Union Elementary School at Pallipalayam and that the pension fixation should have been fixed in accordance with G.O.Ms.No.235/read in analogy with G.O.Ms.No.200, both of Finance Department. It had however been stated that the base should have been with respect to the post last held and not with respect to the actual salary drawn. What had been overlooked in the impugned order is that the pay



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protection has been granted though there was reversion. Such reversion was only owing to lack of seniority. But those who had that qualification of seniority benefited from the order. The petitioner should not have been put to loss on this particular ground. Even otherwise, a perusal of the impugned order had been issued on 13.10.2016. There are no earlier references of communications being interchanged with the petitioner herein seeking his opinion about this recovery of pension.

- (4) In the judgment delivered by the Hon'ble Supreme Court reported in **2015 [4] SCC 334 [State of Punjab and Others Vs. Rafiq Masih [White Washer]]**, the Hon'ble Supreme Court had occasion to examine a batch of matters wherein similar issue had been raised and the only aspect which was pointed out by the Hon'ble Supreme Court was that there should not be any mistake on the part of the petitioner in misrepresentation of his pay or, he should not be either directly or indirectly involved in the payment of higher scale of pay to him. In the instant case, the petitioner had retired in the year 1990. Records are clear and records are straight forward. He was working as



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Headmaster, Middle School Primary Union. There was reversion as Primary School Headmaster. But the pay scale was protected. Subsequently, he again became Headmaster, Middle School and retired as such. Since there has been a protection of pay scale, there cannot be any recovery. The reliance placed by the respondent on aforementioned Government Orders that it is the post which was last held and not the salary, had not taken into consideration that there has been a protection of the pay of the petitioner though he was reverted.

- (5) Further, the judgment referred above, directly applies to the facts of this case and it had been very categorically held that after a period of five years, there cannot be any recovery of pay and it had actually been stated that it would be a burden on the pensioner from whose pension, recovery had been ordered.
- (6) I am informed that a sum of Rs.42,000/- had already been recovered from the petitioner as on the date of filing of the writ petition. There has been an order of stay granted.
- (7) In view of the present order, the impugned order is struck down which would automatically mean that the petitioner is entitled for



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return of the said Rs.42,000/- already recovered from him. He shall be entitled to further pension as he has been receiving. The return of said amount of Rs.42,000/- which was recovered, is to be made within a period of sixteen weeks from the date of receipt of a copy of this order. If respondent requires any clarification, they may issue notice to the petitioner herein and thereafter, pass necessary orders for return of the said amount.

- (8) The writ petition stands **allowed** and the impugned order dated 13.10.2016 in Na.Ka.No.1474/2016/Aa is quashed. No costs. Consequently, connected miscellaneous petition is closed.

13.07.2023

AP

Internet : Yes

To

The Sub Treasury Officer
Sankagiri, Salem District.



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C.V.KARTHIKEYAN, J.,

AP

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