IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

W.P.No.20992 of 2015
and
M.P.Nos.1 & 2 of 2015

P.Lakshmi ... Petitioner

-Vs-

1.The Chief Government Departments Auditing Officer,
Government Department Auditing Office,
Anna Salai, Chennai-2

2.The Chief Government Department Auditing Officer,
Kancheepuram District
Kancheepuram

3.The Deputy Secretary to the Government
Department of School Education,
Secretariat, Chennai

4.The Director
Department of Elementary Education,
DPI College Road, Chennai

5.The District Elementary Educational Officer,
Kancheepuram District,
Kancheepuram

6.The Additional Assistant Elementary Education. Officer,

Additional Assistant Elementary Educational Office
Kundrathur Block (E) Padappai
Thiruperumandhur Taluk,
Kancheepuram District ...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for all record of the impugned order passed by the 6th respondent in his proceeding Na.Ka.No.933/A3/2014 dated 3.6.2014 and quash the same consequently directing them to pay the sum of Rs.61,376/- which is withhold by the respondents to the petitioner, which was withhold by the respondents from the retirement benefit of the petitioner within the specific period of time fixed by this Honourable court

For Petitioner : M/s.D.Magesh

For Respondents : M/s.G.Rajareshwari, Govt. Advocate.

ORDER

The above Writ Petition has been filed for issue of a writ of certiorarified Mandamus to call for the records of the 6th respondent dated 03.06.2014, quash the same and consequently direct the respondent to pay a sum of Rs.61,376/- which is withheld by the respondents from the retirement benefits of the petitioner within a specific period of time to be fixed by this Court.

2. The facts are briefly set out hereinbelow:-

2.1. The petitioner had worked under the 6th respondent as a teacher and had an unblemished record of service. She had superannuated on 31.08.2010 at which point in time she was working as a Headmistress at P.U.Middle School, Pazhanthandalam. At the time of her retirement, the 6th respondent had given a no objection certificate stating that the petitioner had no arrears to the Government nor were there any disciplinary proceedings pending against her. Thereafter, on 12.02.2010 the Assistant Elementary Educational Officer had issued a cheque for a sum of Rs.2,00,000/- as a part final withdrawal amount and retained a sum of Rs.32,078/-.

2.2. 4 years after the retirement, the petitioner was surprised to receive the impugned proceedings of the 6th respondent dated 03.06.2014 stating that a sum of Rs.1,52,182/- had been paid in excess from the provident fund and directing the petitioner to repay the said amount. This was followed by a letter dated 26.08.2014 wherein the 6th respondent threatened the petitioner that if the said sum was not paid immediately appropriate actions would be taken against her.

2.3. On 05.09.2014, the petitioner had submitted an application before the 5th respondent requesting him to re-audit the accounts and allow her to pay the cost in monthly installments. This request was turned down and therefore the petitioner was constrained to send his representation through RPAD on 06.09.2014. To this, the 5th respondent sent a reply dated 17.11.2014 stating that he has no power to allow the petitioner to pay the amounts in installments.

2.4. On 27.12.2014, the petitioner requested the 1st respondent to re-audit her account. However, on 19.01.2015, the 5th respondent sent a letter once again calling upon the petitioner to pay the aforesaid sum of Rs.1,52,182/-. On 24.02.2015, once again the 6th respondent had sent a letter calling upon the petitioner to repay the amount without further delay. Therefore, the petitioner had issued a legal notice on 01.04.2015 to all the respondents. In reply to this notice, the 6th respondent would submit that the petitioner had been paid a sum of Rs.1,17,000/- from the teachers provident fund. However, the petitioner would submit that she has not received any such amount.

2.5. The petitioner would submit that after her retirement the recovery of the aforesaid sum would cause immense hardship to her. The respondents have only released 90% of the amounts due to the petitioner and have withheld a sum of Rs.32,078/-. The respondents have also withheld her Dearness Allowance from the years 1996 to 2008 totalling a sum of Rs.11,298/-. Likewise, her subscription charges of 3 installments totalling a sum of Rs.18,000/- had been withheld. Without paying the aforesaid amount, the respondents are now directing the petitioner to pay a sum of Rs.1,52,182/-.

3. The 6th respondent has filed a counter in which he would submit that while in service a sum of Rs.1,75,000/- as a part final withdrawal was sanctioned and paid to the petitioner in 2007-2008.

However, while calculating her terminal benefits this amount was left out. Thereafter, when the Audit wing of the Government Department had scrutinized the accounts of the petitioner from 1994-95 the omission for including a sum of Rs.1,75,000/- was detected and it was found that the petitioner had a credit of Rs.1,52,182/-.

4. Thereafter, the 4th respondent was instructed to recover the said amount from the petitioner or from the staff responsible for making the over payment. Accordingly, a memo dated 03.06.2014 had been issued calling upon the petitioner to remit the entire amount of Rs.1,52,182/- in one lump sum. The petitioner in her letter dated 12.09.2014 had requested permission to repay the said amount in 20 installments. Since the 5th respondent was not vested with the powers to grant any relief, the said request was not acceded to.

5. Heard the counsels on either side.

6. Admittedly, when the petitioner had superannuated, the 6th

respondent had issued a no objection certificate stating that no arrears of payment was due. She was also permitted to withdraw 90% amount from her Provident Fund account. The impugned order does not refer to the sum of Rs.1,17,000/- stated to have been paid in access.

7. Be that as it may, the impugned order passed by the 6th respondent is against the dicta laid down by the Hon'ble Supreme Court in the judgement reported in ***(2015) 4 SCC 334 – State of Punjab and others Vs. Rafiz Masih (White Washer) and Others,*** wherein the Hon'ble Supreme Court in Paragraph No.18 has stated 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.

(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."

8. Therefore, in the light of the above judgement, the Writ Petition is allowed. The impugned order passed by the 6th respondent in his proceeding Na.Ka.No.933/A3/2014 dated 03.06.2014 is quashed. The respondents are directed to pay the sum of Rs.61,376/- to the petitioner forthwith. No costs. Consequently, the connected Miscellaneous Petitions are closed.

01.07.2024

(shr)
Index : Yes/No
Speaking / Non Speaking Order
Neutral Citation : Yes/No

To

1.The Chief Government Departments Auditing Officer,
Government Department Auditing Office,

Anna Salai, Chennai-2

2.The Chief Government Department Auditing Officer,
Kancheepuram District
Kancheepuram

3.The Deputy Secretary to the Government
Department of School Education,
Secretariat, Chennai

4.The Director
Department of Elementary Education,
DPI College Road, Chennai

5.The District Elementary Educational Officer,
Kancheepuram District,
Kancheepuram

6.The Additional Assistant Elementary Education. Officer,
Additional Assistant Elementary Educational Office
Kundrathur Block (E) Padappai
Thiruperumandhur Taluk,
Kancheepuram District

P.T.ASHA. J.,

(shr)

W.P.No.20992 of 2015
and
M.P.Nos.1 & 2 of 2015

01.07.2024