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W.P.No.15629 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15629 of 2024
and WMP.Nos.17019 & 17020 of 2024

S. Michael Raj

... Petitioner

Vs

1. Government of Tamil Nadu
Rep.by the Secretary
Higher Education (G2 Department),
Secretariat,
Chennai 600 009.
2. The Director of Collegiate Education
College Road,
Chennai 600 006.
3. The Joint Director of Collegiate Education
Chennai Region,
Chennai 600 015.
4. Principal Accountant General,
Office of the Principal Accountant General
(Accounts & Entitlements) Tamil Nadu
381, Anna Salai, Chennai - 600 010.



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5. Pension Pay Officer,
Pension Pay Office,
Annasalai, Nandanam,
Chennai 600 035.

6. The Secretary,
Loyola College,
Nungambakkam,
Chennai 600 034.

...

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari calling for the records pertaining to the proceedings No.O.M.No.6587/U1/2023 dated 22.02.2024 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.B.Ravi

For Respondents : Mr.R.Kumaravel
Addl. Government Pleader for R1 to R3
Mrs.J.Sreevidhya for R4

ORDER

This writ petition is filed for issuance of a Writ of Certiorari to call for the records pertaining to the proceedings No.O.M.No.6587/U1/2023 dated 22.02.2024 issued by the 3rd respondent and quash the same.

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2. The learned counsel for the petitioner submitted that the petitioner is challenging the impugned order dated 22.02.2024 issued by the 3rd respondent. By the said order, the error in fixation of pay in respect of the petitioner was noticed. The impugned order states that the petitioner is entitled for a Grade pay of Rs.2,400/- as on 01.01.2006 whereas, he has been wrongly granted Rs.4,200/- and accordingly it seeks to rectify the mistake. Even though, the impugned order has been passed without any opportunity or without issuing any show cause notice, the petitioner has since retired, he is not aggrieved by the fact of downwardly revising the Grade pay from Rs.4,200 – Rs.2,400 but he would only submit that the said error was not committed on any misrepresentation of the petitioner. When the respondents themselves have wrongly fixed the pay in the year 2006 and now want to correct the mistake in the year 2024, in view of the dictum laid down by the Hon'ble Supreme Court of India in the case of *State of Punjab and Ors., Vs. Rafiq Masih* the respondents are not entitled to recover the same.



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3. Even though, the matter is listed only for admission, the learned Additional Government Pleader who takes notice on behalf of the respondents 1 to 3 submits that in this case the difference which was paid is Rs.1,800/- p.m. and therefore when a huge amount is paid in excess the same is sought to be recovered. Therefore, this Court should not interfere in the impugned order.

4. Heard both sides and perused the materials available on record.

5. Since the learned counsel for the petitioner concedes with reference to the fixation of the Grade pay as Rs.2,400/-, the only question to be determined is that whether or not the respondents will be entitled for recovery of the sum which was paid in excess with effect from 01.01.2006. In this regard, the petitioner was working as Superintendent in Loyola College, Chennai and he retired with effect from 31.01.2024. The alleged excess payment was with effect from 01.01.2006. Therefore, fixation of excess Grade pay as Rs.4,200/- was not on the basis of the representation of



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the petitioner but it is a mistake committed on behalf of the respondents themselves. In that view of the matter, the case is squarely covered under paragraph No.18 of the judgment of the Hon'ble Supreme Court of India in the case of *State of Punjab and Ors., Vs. Rafiq Masih* and accordingly even though the impugned order would be valid in as much as it revises the pay, the excess payment alone cannot be recovered from the petitioner. In view thereof, this writ petition is disposed of on the following terms:-

(i) The impugned order passed by the 3rd respondent dated 22.02.2024 in proceedings No.O.M.No.6587/U1/2023 is upheld in as much as it revises the Grade pay of the petitioner from Rs.4,200/- to 2,400/- with effect from 01.01.2006. However, the same is declared to be illegal in as much it orders the excess amount to be recovered from the petitioner and to be paid to the respondents;

(ii) The respondents will not be entitled to recover any of the sum which is already paid to the petitioner.

(iii) The petitioner's last drawn pay shall be calculated and all the



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retiral and other benefits which are due to the petitioner shall be released to him within a period of 12 weeks from the date of receipt of a copy of this order, if there is no other impediment. No costs. Consequently connected miscellaneous petitions are also closed.

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Neutral Citation : yes/no
dpq



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