IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17936 of 2020 and
WMP.No.22232 of 2020

K.Ragupathy ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009
2.The Director of Elementary Education,
DPI Complex, College Road,
Chennai 600 006
3.The Chief Educational Officer,
Tiruvallore District,
Tiruvallore
4.The Principal Accountant General(A&E) Tamil Nadu,
O/o the Principal Accountant General
AG's Office Complex, 361, Anna Salai,
Teynampet, Chennai 600 18 ... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order issued by the third respondent bearing Na.Ka.No.5845/E1/2020 dated 19.10.2020 and to quash the same and consequently directing the respondents to settle the Gratuity and other pensionary benefits including the regular pension to the petitioner based on the application for sanctioning of pension and DCRG submitted by the petitioner dated 31.05.2019 with all other consequential and attendant benefits along with interest in delay in payment.

For Petitioner : Mr.J.Jayamalan
for Mr.S.Nedunchezhiyan

For Respondents
For R1 to 3 : Mrs.P.Rajarajeswari,
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 19.10.2020, thereby rejected the request made by the petitioner seeking to reconsider the order of recovery.

2. The petitioner was initially appointed as Secondary Grade Teacher and subsequently, he was promoted to the post of Primary School Headmaster. Thereafter he was promoted to the post of Middle School Headmaster on 01.07.2005. Subsequently, he was promoted to the post of Assistant Elementary Educational Officer in the year 2013 and he attained age of superannuation and permitted to retire from service on

30.06.2019. Even before his retirement, pension proposal was forwarded to the fourth respondent based on the last pay certificate. However, the petitioner was not ordered for pension as per the last drawn pay. On the other hand, he was served with order of recovery by the third respondent dated 09.10.2019 stating that revision of salary was wrongly fixed during VI pay commission recommendation and as such, the petitioner was paid excess salary for the period from 01.01.2011 to 30.06.2019 to the tune of Rs.3,34,108/-. Aggrieved by the same, the petitioner submitted representation to reconsider the order of recovery. However, it was not considered and as such, the petitioner filed writ petition before this Court challenging the order of recovery. This court allowed the writ petition and directed the third respondent to give opportunity of hearing to the petitioner and pass fresh orders. Thereafter, the petitioner was served with notice and confirmed the order of recovery by an order dated 19.10.2020.

3. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

4. Admittedly, the order of recovery was made after petitioner's superannuation. Recovery was made for the excess salary paid from 01.01.2011 to 30.06.2019. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Jagdish Prasad Singh Vs. State of Bihar and others*** reported in ***2024 SCC Online 1909***, in which the Hon'ble Supreme Court of India held as follows:

> 21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others1, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir(supra) are extracted hereinbelow: -
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> "57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of

emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were

entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made." (emphasis supplied)

22. Similarly, this Court in ITC Limited v. State of Uttar Pradesh and Others2, held as under: -

"108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.” (emphasis supplied)

23. In the case of State of Punjab and Others v. Rafiq Masih (White Washer) and Others3, this Court held as under: -

“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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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." (emphasis supplied)

5. Thus it is clear that the respondents cannot recover amount paid to the ex-employee, that too after period of 10 years from the date of starting excess pay. Further, the excess payment was not made on any false representation by the petitioner or fraud committed by the petitioner.

6. In view of the above, the impugned order cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order dated 19.10.2020 is quashed. It is made clear that the petitioner is entitled for pension benefit as per the revised scale of pay. However, no recovery shall be made in pursuant to the revision of revised scale of pay. The respondents are directed to disburse all retirement benefits forthwith to the petitioner, if not already disbursed.

7. With the above directions, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

24.09.2024

Neutral citation:Yes/No
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
1.Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Fort St.George, Chennai 600 009
2.The Director of Elementary Education,
DPI Complex, College Road,
Chennai 600 006
3.The Chief Educational Officer,
Tiruvallore District,
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