IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2024

CORAM:

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

W.P.No.34874 of 2023

R.Varadharaju ... Petitioner

Vs.

1.Accountant General (A&E) Tamilnadu,
361, Anna Salai, Chennai 600 018
2.Principal,
Namakkal Kavingar Ramalingam Government Arts College for Women,
Namakkal 637 002 ... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent to refund the sum of Rs.1,40,582/- recovered from petitioner's earned leave surrender amount vide proceedings Na.Ka.No.1553/E/2018 dated 18.11.2019.

For Petitioner : Mr.R.Subramanian

For Respondents
For R1 : Mrs.Hema Murali Krishnan,
Standing Counsel

ORDER

This writ petition has been filed for direction to the first respondent to refund the recovered amount from the petitioner's earned leave surrender amount by the proceedings dated 18.11.2019.

2. The petitioner retired as Lab Assistant from Namakkal Kavingar Ramalingam Government Arts College for Women, Namakkal. At the time of his retiremen, his pension was fixed at Rs.27,600/- and terminal benefits of Rs.9,62,688/-. The pension was fixed as per his basic salary and as per GO.Ms.No.63. Thereafter, the petitioner was also sanctioned revised salary as per GO.Ms.No.303. At the time of his retirement, when the pension proposal was forwarded to the first respondent, a query was raised stating that as per GO.63, his revised pension should be 9300+4200 i.e. 13,500 and not Rs.14,810. The additional fitment table is not applicable and the entries made in the service register of the petitioner have to be reviewed and revised entries from 01.01.2006 to the date of retirement have to be made. Further stated that the pay as on 31.12.2015 should be 15090+4200 GP and revised pay as per GO.Ms.No.303 should be Rs.50,500 w.e.f. 01.01.2016. Therefore, by the proceedings dated 18.11.2019, the petitioner was informed that as per proceedings of the first respondent dated 03.01.2019, the excess amount of Rs.1,40,582/- had been paid and it should be recovered from the earned leave surrender amount.

3. In similar matter, this Court already passed order in WP(MD).No.873 of 2019 thereby upheld the contention of the authorities that the additional fitment table is not applicable to Lab Assistants who have got promotion. Further held that there should not be any recovery from the employees. Therefore, the petitioner made representation to refund the deducted amount from his gratuity. Further, the Hon'ble Supreme Court of India also held in the case of ***State of Punjab and others Vs. Raffiq Masiq*** reported in ***(2014) 8 SCC 883*** that there should not be any recovery from Group C and D employees after retirement unless any due to any misrepresentation they had obtained higher pay fixation. Following the said judgment, the Government of Tamilnadu also passed order in GO.Ms.No.286 dated 28.08.2018 thereby issued guidelines in the matter of recovery from the retired employees. In the said judgment, it is stated that any amount paid / received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right. In view of the above judgment, this Court held in WP(MD).No.873 of 2019 dated 18.12.2009 as follows:

> 10.The aforesaid observations of the Hon'ble Supreme Court is self explanatory. While holding that the excess amount without the authority of the law can be recovered, the Hon'ble

Apex Court had saved a few exceptions of extreme hardships, though not as a matter of right. Some of the instances pointed out in Syed Abdul Qadir's case and B.J.Akkara's case was also referred to therein. Pursuant to the decision holding that the reference in White Washer's case (Larger Bench), the subsequent decision in the White Washer case reported in (2015) 4 SCC 334 came to be pronounced. In the said decision, the reference made in Chandi Prasad Uniyal and others (supra) to Syed Abdul Qadir case and B.J.Akkara case was also considered. On consideration of such instances, the Hon'ble Apex Court had postulated some of the instances, where the recovery could be held as impermissible in law. In view of the observations made in Chandi Prasad Uniyal and others (supra) that a few exceptions of extreme hardships could be excluded from the recovery proceedings and the subsequent decision in White Waher's case reported in (2015) 4 SCC 334, wherein the said situations were narrowed down and postulated, this Court is of the view that the instances mentioned therein could be adopted as a guideline. If so, the recovery made from the petitioner, who had reached his age of superannuation, cannot be sustained in view of Clause 18(ii) which states that recovery from the retired employees or the employees, who are due to retire within a period of one year, is impermissible in law.

11.The learned counsel for the second respondent also submitted that the contemplation to recover the amount was made even prior to the petitioner's retirement on 01.03.2018 itself. If the guideline stipulated by the Hon'ble Apex Court in 18 (ii) referred above is adopted, it can be said that such a proposal from the second respondent to the first respondent is also within a period of one year prior to the petitioner's date of superannuation which is again in impermissible.

4. In view of the above discussions, the first respondent recovered the alleged excess amount and it is impermissible. Therefore, the first respondent is directed to refund the said amount of Rs.1,40,582/- recovered from petitioner's earned leave surrender amount vide proceedings Na.Ka.No.1553/E/2018 dated 18.11.2019 within a period of eight weeks from the date of receipt of copy of this order.

5. With the above direction, this writ petition is disposed of. There shall be no order as to costs.

02.01.2024

(2/2)

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

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To

1.Accountant General (A&E) Tamilnadu,
361, Anna Salai, Chennai 600 018
2.Principal,
Namakkal Kavingar Ramalingam Government Arts College for Women,
Namakkal 637 002
3.The Government Advocate
High Court of Madras

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