
(2010) 06 KAR CK 0086
In the Karnataka High Court
Case No : Writ Petition No. 29937 of 2009

Ammayamma

APPELLANT

Vs

Deputy Commissioner and Assistant Controller

RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Citation : (2010) 06 KAR CK 0086

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : K.B. Muralidhar, for the Appellant; Jagadeesh Mundargi, AGA, for the Respondent

Judgement

Mohan Shantanagoudar, J.—Petitioner was working as Pura Karmike under Town Municipality Council, Hosakote. She retired from service after attaining the age of superannuation or 31.3.2008. After the retirement, while settling the pensionary benefits, the second respondent addressed a letter to the Chief Office, Town Municipal Council, Hosakote, stating that the pay of the petitioner has been wrongly fixed w.e.f. 1.7.1986 and therefore he directed him to get the re-fixation done by the competent authority and to recover the excess salary paid to her w.e.f. 1.7.1986. Pursuant thereto, the first respondent issued the Official Memorandum refixing the salary of the petitioner w.e.f. 1.1.1982 and ordered for recovering the alleged excess amount from DCRG and the other pensionary benefits of the petitioner. Pursuant to the said order, the second respondent has withheld Rs. 80,000/- which is due to the petitioner from DCRG payable to the petitioner. Action of the respondents is called in question in this writ petition.

2. From the above facts, it is clear that respondent No. 1 has opened his eyes after 22 long years about the alleged wrong fixing of pay. According to the first respondent, the pay of the petitioner was wrongly fixed from 1.7.1986. It is not in dispute that the petitioner was paid salary regularly from the date of her appointment till her retirement. Even after 1.7.1986 the petitioner was paid the salary. Respondent No. 1 has raised the aforementioned issue only in the year

2008 alleging that the petitioner's pay is wrongly fixed from 1.7.1986. Pursuant to the same, an amount of Rs. 80,000/- which is due to the petitioner is withheld by respondent No. 2.

3. Such a course is not open to the respondents. The similar question is already discussed by the Apex Court in the case of Sahib Ram v. The State of Haryana and Ors. reported in 1994 (5)SLR 753 and in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , wherein it is ruled that if higher pay scale erroneously given to the employees and same is received without any fault of them, then the said amount shall not be recovered. The Apex Court has ruled that it is just and proper for the State Government not to recover the excess amount already paid to the employees till the date of passing of the impugned order.

4. In view of the above, the impugned Official Memorandum dated 11.6.2008 vide Annexure-B passed by the first respondent cannot be sustained and is liable to be quashed. Hence, the following order is made:

The impugned Official Memorandum dated 11.6.2008 at Annexure-B passed by the 1st respondent stands quashed. The amount of excess salary paid to the petitioner till the date of impugned Official Memorandum shall not be recovered and consequently the respondents have to pay Rs. 80,000/- (Rupees eighty thousand only) withheld by them under the head of DCRG, to the petitioner within three months from this day.

5. Writ petition is disposed of accordingly.