
(2012) 09 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No. 15963 of 2012 and M.P. No's. 1 and 2 of 2012

D. Madurai Pillai

APPELLANT

Vs

Accountant General, Office of the PR. Accountant General,
(Account and Entitlement), Tamilnadu, Chennai and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Citation : (2013) 2 MLJ 21

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : T. Ganesan, for the Appellant; V. Vijaya Shankar and R.M. Muthukumar, Government Advocate, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner was employed in Agricultural Department and retired from service on 31.5.2006 on reaching the

age of superannuation. He was paid pension. Pursuant to the recommendations of the Sixth Pay Commission, pay was revised with effect from

1.1.2006 for the service employees and from 1.1.2007 to the retired employees.

2. Based on the aforesaid recommendations, pay was revised and fixed at Rs. 11,520/- by an order dated 2.2.2010. A grade pay of Rs. 2,400/-

was also taken into account. Admittedly, pension was revised and fixed at Rs. 6,960/-. The revised pension was to be paid with effect from

1.1.2007. The petitioner was paid arrears pursuant to the aforesaid revision.

3. While so, the first respondent has found after more than a year that pension was incorrectly fixed for the petitioner at the revision. According to

the first respondent, the revised pay shall be taken as Rs. 9,120/- and not Rs. 11,520/-. In that event, pension shall be revised to Rs. 5,760/- and

not Rs. 6,960/-. Accordingly, a show cause notice dated 10.10.2011 was issued to the petitioner as to why recovery shall not be made of Rs.

1,02,936/- representing the excess payment made due to erroneous revision of pension. According to the first respondent, the pension was

erroneously revised for the petitioner at Rs. 6960/- instead of Rs. 5,760/-. Ultimately, the impugned order dated 26.12.2011 was passed for

recovery of Rs. 1,02,936/- in installments and also for revision of his pension from Rs. 6960/- to Rs. 5760/-.

4. The petitioner has filed this writ petition seeking to quash the order dated 26.12.2011. According to the petitioner, the impugned order of

recovery is bad and illegal as he was in no way responsible for erroneous fixation of pension and as the mistake is on the part of the Department,

the petitioner shall not be made to suffer by way of recovery. He has no objection for correctly revising the pension.

5. The respondents filed counter refuting the allegations. It is stated that there was a mistake in revising the pension and the mistake was rectified

by way of impugned order. Therefore, the writ petition is to be dismissed.

6. Heard both sides.

7. It is not disputed that erroneous revision of pension at Rs. 6,960/- with effect from 7.1.2007 instead of Rs. 5,760/- was not due to the furnishing

of any details by the petitioner. It was due to the mistake committed by the respondents 2 and 3. In these circumstances, arrears due to revision in

pension was given to petitioner and the same was sought to be recovered on the ground that there was erroneous calculation. It is done after more

than one and a half year.

8. As stated above, the mistake was not on the part of the petitioner. There is no misrepresentation on the part of the petitioner with regard to the

revision of his pension. Hence, any excess amount paid to the petitioner shall not be recovered from him as held by the Apex Court and Division

Bench of this Court. In fact, I have considered this in the decision dated 10.9.2009 in A.P. N. Rukmani Vs. The District Treasury Officer and The

Sub-Treasury Officer of the above decision are extracted hereunder:

13. The Hon''ble Apex Court has categorically held in various decisions that if any excess payment was made by the Department to an employee,

not due to any misrepresentation from him, the Department cannot seek to

recover the excess payment, later. After referring to the earlier decisions in Sahib Ram Vs. State of Haryana and Others, Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. , The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, , the Hon''ble Apex Court, held in the decision in Purshottam Lal Das and Others Vs. The State of Bihar and Others, that the Department cannot resort to recovery of excess amount if the said excess amount was paid not due to any misrepresentation on the part of the concerned employee. Paragraph 5 of the judgment in Purushottam Lal Das v. State of Bihar (supra) is extracted hereunder in this regard:

5. Admittedly, the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University

Grants Commission. The appeal is allowed partly without any order as to costs.

14. A Division Bench of this Court in the case of D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, has followed the decision of the Apex Court in Sahib Ram case, referred to above, and in paragraph 6, it has been laid down as under:

We are of the view that the course and method adopted by the Tribunal cannot be appreciated in the case of the petitioner. Even if it is accepted for the argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers, for which the petitioner should not be penalised after a lapse of number of years that too after retirement of the petitioner.

15. In view of the categorical pronouncement of the decisions of the Hon''ble Apex Court and this Court, referred to above, the writ petition is entitled to succeed and accordingly a direction is issued to the respondents not

to recover from the pension payable to the petitioner towards the excess amount paid pursuant to the revision in pension for the re-employment period of the petitioner.

9. In view of the same, I have no hesitation to quash the impugned order dated 26.12.2011 insofar as the recovery is concerned. It is stated that

so far Rs. 18,000/- (Rupees eighteen thousand only) is recovered. Hence, while quashing the impugned order relating to recovery, a direction is

issued to the respondents to return back the amount of Rs. 18,000/- (Rupees eighteen thousand only) to the petitioner. However, the revision of

pension from Rs. 6,960/- to Rs. 5,760/- is not interfered with. The writ petition is disposed of in the above terms. No costs. Connected M.P.

Nos. 1 and 2 of 2012 are closed.