

(2010) 08 MAD CK 0412

In the Madras High Court

Case No : Writ Petition No. 7007 of 2006 W.P.M.P. No. 7621 of 2006 and
W.V.M.P. No. 343 of 2007

D. Purushothaman and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0412

Hon'ble Judges : N. Paul Vasantha Kumar, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; A. Suresh, Government
Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasantha Kumar, J.—The prayer in the writ petition is to issue a Writ of Certiorari calling for the records on the file of the Second Respondent in connection with the order passed by him in Letter No. 1392/C2/93 -6, dated 22.7.1999 and also on the file of the third Respondent in connection with the order passed by him in his proceedings No. 1748/E1/03, dated 28.12.2004 and 1748/E1/03, dated 26.12.2005 respectively and quash the same.

2. The case of the writ Petitioner-Association is that its members formed the Association called "Government Polytechnic Technical Staff Association" and the members are serving in various posts in the Institute of Leather, Tharamani, Chennai. It is stated in the affidavit that the State Government has passed G.O. Ms. No. 576, Finance (Pay Cell) Department dated 1.8.1992 revising the scale of pay of various categories of employees mentioned in the said G.O., giving notional fixation of pay from 1.6.1988 and monetary benefits from 1.4.1992. The Petitioner-Association filed O.A. No. 2128 of 1991 before the Tamil Nadu State Administrative Tribunal and prayed for revised scale of pay with effect from 1.10.1984 and with monetary benefits from 1.4.1986 as per the recommendation of the One Man Commission. The said O.A., was allowed by the

Tribunal by order dated 23.9.1993. Against the said order, a Review Application was filed by the Government in R.A. No. 194/1995 and the Association filed Contempt Application in C.A. No. 161/1994. The Tribunal dismissed the Review Application and in the Contempt Application, gave direction to implement the order within a period of two months. On the basis of this order, the Government passed G.O. Ms. No:739, dated 18.12.1996 implementing the order of the Tribunal. Accordingly, the members of the Petitioner-Association also received the monetary benefits.

3. Whiles, the Secretary to the Government, Higher Education(C) Department, Chennai-9 had written a letter dated 22.7.1999 after a lapse of 6 years from the date of the order of the Tribunal, to the Director of Technical Education, stating that the re-fixation of pay on the basis of G.O. Ms. No:739, Finance, dated 18.12.1996 does not arise in view of the G.O. Ms. No:576, dated 1.8.1992. On the basis of the above letter, the Principal of the Institute of Leather Technology passed an order dated 28.12.2004 directing the Members of the Petitioner-Association to repay the excess amount in one installment, paid for the period from 1.6.1988 to 31.3.1992, against the order of the Government in G.O. Ms. No:739, dated 18.12.1996, which was issued as per the direction of the Tribunal. Since they filed representations the said order has been kept in abeyance. However, again by order dated 26.12.2005, the third Respondent passed an order and directed them to repay the excess amount, otherwise to recover the said amount in 10 installments from the month of January 2006. The said order is challenged in this writ petition.

4. The learned Counsel appearing for the Petitioner-Association at the time of arguments submitted that the Members of the Association are challenging the recovery order on the ground that the monetary benefits were received by them following the issuance of the G.O. Ms. No:739, dated 18.12.1996 which was passed on the basis of the order of the Tribunal and therefore, the second Respondent has no jurisdiction to pass an order to recover the payments already made. Moreover, the recovery order has been passed after a lapse of 10 years from the date of disbursement and further before the recovery order has been passed, no opportunity of hearing was given, which is violative of principles of natural justice, fair play, equity and good conscience.

5. During pendency of the writ petition, the recovery order was stayed by this Court by order dated 13.3.2006 and the Respondents have filed a Vacate Stay Petition by contending that following the Fifth Tamil Nadu Pay Commission, for the technical staff, Scales of Pay were further revised as per the G.O. Ms. No:576 Finance (Pay Cell) Department dated 1.8.1992 with notional effect from 1.6.1988 and with monetary benefit only from 1.8.1992 and this G.O., is applicable to all the categories of technical staff mentioned therein without any discrimination. When clarifications were sought for regarding claiming arrears after issuance of G.O. Ms. No:739, dated 18.12.1996, the Government clarified that the arrears of pay may be calculated with effect from 1.6.1988. However, subsequently the

Government instructed the Director of Technical Education by letter dated 22.7.1999 that the question of paying arrears again due to refixation of pay in the revised scales with effect from 1.6.1988 to 31.3.1992 did not arise. Consequently the impugned recovery orders were issued by the Principals of the Institutions ordering repayment of excess payment which was erroneously drawn and paid. It is further stated that revision of scales of pay as per the Official Committee recommendations (G.O. Ms. No:576, dated 1.8.1992) will not have monetary benefit for the period from 1.6.198 to 31.7.1991 which is a common policy decision of the Government applicable to all the relevant classes of employees.

6. It is also contended that the categories of the staff working in the (i) Directorate (ii) Technical Education Divisions (iii) Government Engineering Colleges (iv) Government Polytechnics and (v) Special Institutions were not allowed monetary benefit for the period from 1.6.1988 to 31.7.1992 and if recovery is not effected on the Petitioners, they will also come up with similar request, which will result in chain of reactions, resulting in huge expenditure to the State Exchequer.

7. Heard the learned Counsel for the Petitioner and the learned Government Advocate for the Respondents.

8. The point for consideration in this writ petition is as to whether the recovery orders dated 28.12.2004 and 26.12.2005 passed by the third Respondent, that too, 10 years after disbursement of arrears, could be sustained.

9. A perusal of the order passed in O.A. No:2128 of 1991 would show that though the Government took the stand before the Tribunal that the question of retrospective effect from 1.10.1984 to the individuals without adequate qualification as per the rules is quite unjust and unfair, the Tribunal relying upon the recommendations of the One Man Committee, observed that its recommendation to give effect to the revised scales of pay notionally with effect from 1.10.1984 and with monetary effect from 1.4.1986 should be taken as accepted by the Government.

10. As against the order passed by the Tribunal, the Government filed Review Application which has been dismissed by the Tribunal directing the Government to implement its order within two months. Thereafter, the Government took the matter in appeal before the Supreme Court in SLP (Civil) No:12579/96, which was also dismissed upholding the views of the Tribunal. Only thereafter, the Government passed G.O. Ms. No:739, Finance (CMPC) Department, dated 18.12.1996 granting revised scale of pay to be given to the Members of the Writ Petitioner-Association notionally from 1.10.1984 and with monetary benefit from 1.4.1986 and accordingly, they also received the monetary benefits.

11. The second Respondent by his letter dated 22.7.1999 clarified that since initially, the basis pay of the incumbents may be correspondingly fixed in the Fifty Pay Commission scale of pay with effect from 1.6.1983 and again refixed

notionally with effect from 1.6.1988 in the pay scale recommended by the official committee on 1.8.1992, the question of arrears, again due to refixation of pay with effect from 1.6.1988 as per G.O. Ms. No. 739, Finance dated 13.12.1996 does not arise in the subsequent revised pay scale recommended by the Official Committee. Consequently, the impugned orders of recovery were passed.

12. Considering the facts and circumstances, without going into the merits of the case, it is seen that admittedly, the impugned orders, ordering recovery of excess pay and allowances paid for the period from 1.6.1988 to 31.7.1992 were passed without any notice to the Members of the Writ Petitioner-Association. It is not the case of the Respondents that the Members of the Writ Petitioner-Association have suppressed any material facts or by giving false statements and based on the same, they were paid salary in the revised time scale of pay for the period from 1.6.1988 to 31.3.1992. The salary having been sanctioned by the third Respondent and paid to the members of the Association without any suppression or misrepresentation on their part, the amount already paid to them cannot be recovered in terms of the decisions of the Supreme Court *Sahib Ram v. State of Haryana* and (1995) 1 SCC 18 *Babulal Jain Vs. State of M.P. and Others*, ; Division Bench decisions of this Court reported in *D. Palavesamuthu v. Tamil Nadu Administrative Tribunal* 2006 (3) LLN 461 and *P. Arumugam v. Registrar, Tamil University* (2006) 3 MLJ 1025 ; and the decision of mine reported in *S.A. Kanthimathi v. Director of School Education, Madras* (2006) 1 MLJ 695.

13. Similar issue was considered by the Supreme Court in the recent decision reported in *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.* 2009 (1) Supreme 163, and in paragraph-28, it is held as follows:

28. Undoubtedly, the excess amount that has been paid to the Appellants-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 Appellants-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 Appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the Appellants-teachers should be made.

14. Following the above judgments, the orders dated 28.12.2004 and 26.12.2005 insofar as ordering recovery of alleged excess amount in respect of the Members of the Petitioner-Association are set aside.

15. The writ petition is allowed to the above extent. No costs.