
(2009) 07 MAD CK 0408

In the Madras High Court

Case No : Writ Petition No. 4568 of 2007 and O.A. No. 2659 of 2001

D.S. Sampath

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 07 MAD CK 0408

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : K. Thennan, for the Appellant; V. Arun, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The brief facts of the case are as follows:

The petitioner, who was a Secondary Grade Teacher Training qualified person, was appointed as Grade II Tamil Pandit, on 23.10.1967 and served as Grade II Tamil Pandit, till 22.1.1971, in Government High School, Su. Valavatti, in Vellore District. During the period of his service, as a Grade II Tamil Pandit, he was ousted from service, during the months when there was summer vacation, from 1968 to 1969. He was posted as a Secondary Grade Teacher, on a regular basis, from 23.1.1971, in the Government Higher Secondary School, in Tiruvannamalai District. The petitioner was serving as a Tamil Pandit Grade II, in the Government Higher secondary school, Vandavasi, Tiruvannamalai District, at the time of the filing of the Original Application before the Tamil Nadu Administrative Tribunal, Chennai in O.A. No. No. 2659 of 2001.

3. The petitioner's service, as a Tamil Pandit Grade II, is equivalent to Secondary Grade Assistant Service. Further, the petitioner had served in the place of Grade

II Tamil Pandit with the qualification of Secondary Grade and as such, it should be treated as Secondary Grade service for all purposes, including regularisation of Secondary Grade Service, selection/Special Grade in Secondary Grade Assistant Service.

4. The learned Counsel appearing for the petitioner had submitted that with regard to a similarly placed person, N. Chethia Gounder, the Government of Tamil Nadu had issued G.O.Ms. No. 692, Education, Science and Technology (M1) Department, dated 25.9.1996, while implementing the decision of the Tamil Nadu Administrative Tribunal, made in O.A. No. 4647 of 1993, by an order, dated 10.6.1994. By the said order, the Tamil Nadu Administrative Tribunal had directed the regularisation of the service of N. Chethia Gounder, a Secondary Grade Assistant, retrospectively, by taking his Grade II Tamil Pandit service, as Secondary Grade Service, and to count the said Grade II Tamil Pandit service with the Secondary Grade Assistant service, for all purposes.

5. By a Government Order, in G.O.Ms. No. 692, Education, Science and Technology (M1) Department, dated 25.9.1996, the directions issued by the Tamil Nadu Administrative Tribunal was implemented by the authority concerned. Since the petitioner is placed in a similar situation, he should also be given the benefits, which were given to N. Chethia Gounder.

6. It has been further stated that the Joint Director of School Education, Chennai, in his proceedings O.Mu. No. 148832/C2/C33/97, dated 6.11.1997, had directed the Chief Educational Officer, Tiruvannamalai, to count the Grade II Tamil Pandit service with the Secondary Grade service for the purpose of awarding Selection/Special Grade in Secondary Grade Assistant post. The Chief Educational Officer, Tiruvannamalai, had awarded Selection/Special Grade in Secondary Grade by counting the petitioner's Grade II Tamil Pandit service with the Secondary Grade Assistant service.

7. The petitioner was awarded Special Grade in Secondary Grade, from 9.11.1987 onwards. However, the fourth respondent, without giving any notice to the petitioner, had passed the impugned order of recovery, in his proceedings Na.Ka. No. 76/2001, dated 23.2.2001. It is further stated that the Government order in G.O.Ms. No. 100, School Education (M1) Department, dated 18.4.2000, is the basis for the order of recovery passed against the petitioner.

8. The main contention of the learned Counsel appearing for the petitioner is that the impugned orders of recovery have been passed without any notice being issued to the petitioner to put forth his case. The impugned orders are arbitrary and illegal, as it is contrary to the provisions enshrined in Articles 14 and 16 of the Constitution of India. Further, the respondents had not followed the principles of natural justice, while passing the said orders. In such circumstances, the impugned orders are liable to be set aside.

9. No reply or counter affidavit has been filed on behalf of the respondents.

11. The recovery of the excess amount said to have been paid to the petitioner cannot be made, as held by this Court in its order, dated 27.6.2008, made in W.P. No. 16150 of 2006 and as held in the following decisions:

11.1) In *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , the Supreme Court had held that it is not just and proper to recover any excess amounts already paid to the petitioner, since the petitioners have received the higher scale of pay due to no fault of theirs.

11.2) The Supreme Court, in *Sahib Ram Vs. State of Haryana and Others*, , had held that the recovery of excess payment given by the authorities concerned, by wrong construction of the relevant orders, without any misrepresentation by the employee, cannot be made.

11.3) The Supreme Court, in *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.* , had held that the recovery of the increments given, not on account of any representation or misrepresentation, cannot be sustained, as it would not be in consonance with equity, good conscience, justice and fairness.

11.4) In *Union of India and Others Vs. Rekha Majhi*, , the Supreme Court had refused to permit the recovery of excess payment made, since the person against whom the recovery was to be made was the only breadwinner of the family and as she was, financially, not in a position to pay back the excess dearness relief drawn.

11.5) In *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, , the Supreme Court had held that the recovery of the excess amounts paid to the employees could be recovered only in such cases where they have been found guilty of producing forged certificates or their appointments had been secured on non-permissible grounds.

11.6) In the decision of the Supreme Court, in *Babulal Jain Vs. State of M.P. and Others*, , it was held that since the excess payment had been made on misconception of law and not due to any mistake or misrepresentation on the part of the appellant, the recovery of the excess amount, without issuing any show cause notice, is not justified.

11.7) In the decision of the Supreme Court, in *State of Bihar and Others Vs. Pandey Jagdishwar Prasad*, , it has been held that where due to confusion in date of birth due to negligence and lapses on the part of the authorities due to which a service holder worked beyond his service tenure and was paid for it, no deduction could be made for that period from the retiral dues."

11.8) In the decision of a Division Bench of this Court in *P. Arumugam v. Registrar, Tamil University* (2006) 3 M.L.J. 1025, it was held that when the employee was not responsible for the wrong fixation, the excess payment made cannot be recovered, especially, after the retirement of the employee and when the recovery was sought for after 17 years of service.

11.9) In *D. Palavesamuthu v. T.N. Administrative Tribunal* (2006) (3) L.L.N. 461, a Division Bench of this Court had held that when the fault of excess payment was committed by the Department and their officers and it was not due to the petitioner, the petitioner cannot be penalised after the lapse of number of years, that too after his retirement.

11.10) In *Kanthimathi, S.A. v. Director of School Education, Madras* (2006) 1 M.L.J. 695, this Court had held that the recovery of excess amount paid cannot be recovered when it was not due to the fault of the petitioner and when no opportunity had been given to her before the order of recovery was passed. Since the salary paid to the petitioner was not on account of any misrepresentation and when the order had been passed without giving any opportunity to the petitioner to put forth her case, the impugned order of recovery was quashed.

10. In view of the submissions made by the learned Counsel appearing for the petitioner and in view of the decisions cited above, the impugned order of the first respondent, in G.O.Ms. No. 100, School Education (M1) Department, dated 18.4.2000 and the consequential order of the fourth respondent, dated 23.02.2001, are set aside, insofar as it relates to the recovery of the amount already paid to the petitioner, as salary. However, it is open to the respondents to regularise the scale of pay of the petitioner, in accordance with law, after affording a reasonable opportunity to the petitioner to put forth his case. Accordingly, the writ petition is allowed, as noted above. No costs.