

(2009) 08 MAD CK 0067

In the Madras High Court

Case No : Writ Petition No. 996 of 2009 and M.P. No"s. 1 and 2 of 2009

G.P. Vetrichelvi

APPELLANT

Vs

The Additional Assistant Elementary Educational Officer and
The Accountant General (Accounts and Entitlements)

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Tamil Nadu Pension Rules, 1978 — Rule 44(4)

Citation : (2009) 08 MAD CK 0067

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : P. Rajendran, for the Appellant; Dhakshyani Reddy, Government Advocate for R.1, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first respondent dated 20.11.2008, by which the respondent directed

for the recovery of an amount of Rs. 36,630/- from the salary of the petitioner at the rate of Rs. 3663/- per month for a period of 10 months.

2. The petitioner, who is working as Headmistress in the Panchayat Union Middle School, Thiruchinnapuram, Kattumannarkoil Union was

originally appointed as Secondary Grade Teacher on 9.11.1987. She passed M.A. and B.Ed. degrees at that time and thereafter, she was

promoted as Primary School Headmistress on 01.06.2002 and Middle School Headmistress on 23.07.2007. Since the petitioner was holding

higher educational qualifications, she was sanctioned two incentive increments for the possession of M.A. and B.Ed. degree qualifications. The

increments were sanctioned in the year 1994. Even though there was no

separate order passed, the amount of increments was added along with her monthly salary. However, the first respondent, by the impugned order directed for the recovery of the amount on the basis that an audit objection has been raised in respect of the said payment in favour of the petitioner.

3. It is the specific case of the petitioner that the incentive increments were granted to her only due to the reason that she was having more

qualifications than the required qualification for the post she held and taking note of the fact that she was having higher qualifications, she was

granted incentive increments and there was no fault on the part of the petitioner. It is also stated that in respect of a similarly placed person, viz., M.

Gajendran, an amount of Rs. 15,423/- was ordered to be recovered at the rate of Rs. 1543/- for 9 months and Rs. 1536/- for one month. It is the

case of the petitioner that when the incentive increments were sanctioned simultaneously to the petitioner and the said person, the amount of

recovery in respect of the said person is less than the amount ordered to be recovered in the impugned order against the petitioner. According to

the petitioner, she had no role to play in respect of payment of incentive increments. In such circumstances, the petitioner has filed this writ petition.

4. In the counter affidavit filed by the first respondent, while it is admitted that the petitioner was having B.Ed. degree and the appointment was

made as per G.O.Ms. No. 539, Education, dated 21.4.1986, it is the case of the first respondent that as per the said G.O., the petitioner is not

eligible to draw any incentive increment for the possession of higher qualifications. According to the first respondent, B.Ed. degree is not a higher

qualification. It is admitted that the petitioner was granted incentive increment with effect from 1.6.1988 for M.A. and B.Ed. qualifications and the

impugned order came to be passed for the purpose of recovery based on the audit objection raised by the Accountant General and after a period

of 21/2 years from the date of sanction, the amount is sought to be recovered under the impugned order. It is the case of the respondent that the

required qualification of D.T.Ed. for the post of Secondary Grade Teacher is equivalent to that of B.Ed. and therefore, B.Ed. degree cannot be

stated to be a higher qualification.

5. A reading of the counter affidavit makes it clear that it is based on the

objection raised by the Accountant-General, the recovery has been made.

On the facts and circumstances of the case, it is clear that it is not as if the petitioner has herself represented to the first respondent for the grant of

the said incentive increments. While the qualification of the petitioner, that is, M.A., B.Ed. is not in dispute, it is only the case of the first respondent

that B.Ed. is equivalent to the required qualification for the post of Secondary Grade Teacher viz., D.T.Ed., while admittedly the petitioner has

never represented that B.Ed. should be treated as an additional qualification for the grant of incentive increment and only the first respondent has

granted the incentive increment. Further, it is the case of the first respondent that there was no show-cause notice issued before the recovery was

ordered. Therefore it is not possible to accept the contention raised by the first respondent in the counter affidavit that the petitioner is liable for

recovery of the excess amount from her salary. It is also seen that while admitting the writ petition, this Court granted interim stay of recovery and

the said order of interim stay continues till date.

6. It is well settled that where there is no misrepresentation or active involvement of the person concerned for the purpose of getting any benefit, it

cannot be said to be unjust benefit, if the person has been given such benefit and if at all there is any remedy to the first respondent, it is only to

take action against the officials who are said to be responsible for such mistake. In Babulal Jain Vs. State of M.P. and Others,

, while referring to M.P. Civil Services (CCA) Rules, wherein higher scale was granted in respect of the post held by a person, taking note of the

fact that there was no promotional opportunity and monetary benefit was given as deputation allowance, it was held as follows:

15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. The appellant has discharged higher

responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, take place on a

misconception of law. He was atleast entitled to some allowance. In refixing his pay, his claim to that effect has not been considered. He has since

retired. A sum of Rs. 22,000/- has been recovered from him. Such recovery has been effect without issuing any show-cause notice. His case on

merit in this behalf had not been considered by the Government and even by the

Tribunal.

7. Even before the said judgment, the Supreme Court in *Sahib Ram v. State of Haryana and Ors.* (1995) Supp. (1) SCC 918, in similar

circumstances, particularly when upgraded pay scale of librarian was made on the basis that the incumbent was having better qualification, held as

if the authority is erred in granting relaxation or benefit without any misrepresentation on the party concerned, the benefit of higher pay scale paid

cannot be held to be due to the fault of the concerned person and the amount cannot be recovered. The relevant portion of the judgment is as

follows:

5. Admittedly, the appellant does not possess the required educational qualifications. Under the circumstance, 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 the 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 circumstance, 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.

8. Following the said judgment, this Court in *S.A. Kanthimathi v. Director of School Education, Madras and Ors.* (2006) 1 MLJ 695, in similar

circumstances, held as follows:

3. A perusal of the impugned order of recovery nowhere discloses that the petitioner has misrepresented or suppressed for the receipt of excess

scale of pay. Further, no notice or opportunity was given to the petitioner before the impugned order of recovery was passed and as stated, the

petitioner also retired from service.

4. In the said judgment of the Supreme Court, it is clearly stated that since the salary is paid not on account of any misrepresentation made by the

appellant and the benefit of higher scale of pay was made by the wrong construction made by the Principal for which the appellant cannot be held

to be at fault. The facts in this case also and therefore the impugned order of

recovery is quashed. The writ petition is allowed. No costs.

9. A Division Bench of Madurai Bench of this Court in P. Arumugam v. Registrar, Tamil University, Thanjavur (2006) 3 MLJ 1025 while following

the said judgment of the Supreme Court in Sahib Ram's case, cited supra, construed the provisions of Tamil Nadu Pension Rules and held as

follows:

11.5. ...It is relevant to state that between 1.2.1984 i.e. the date of appointment of the appellant as Superintendent in the respondent University, till

he was allowed to retire from service on 31.12.2001, the respondent did not raise its little finger as regards the alleged excess payment paid to the

appellant. On the other hand, knowing fully well about the previous employment of the appellant, the respondent University in its offer of

appointment, dated 13.06.1983 as well as the order of appointment dated 21.7.1983, specifically mentioned that the pay of the appellant was

being fixed in a particular scale ensuring the pay last drawn by the appellant in his previous employment. That apart, it is not known why in spite of

the Audit Objections raised as early as in the year 1984-85, the respondent did not intimate the same to the appellant nor taken any proceedings

for suitably re-fixing the pay fixed at the time of issuance of the order of appointment in accordance with Rule 44(4)(i) of the Tamil Nadu Pension

Rules. The respondent thus, with its eyes wide open, fixed the pay of the appellant in a particular scale of pay applicable to him and also allowed

him to draw that pay throughout his service in the respondent University till the date of his retirement. Therefore, while the respondent was squarely

responsible for the wrong fixation of pay, if any, of the appellant, the appellant was never to be blamed as regard his pay fixation....

10. In addition to the above, on the facts of the case it is clear that while passing the impugned order, there was no opportunity given to the

petitioner at all to explain her case. This is also in violation of the principles of natural justice. For all the above said reasons, I am of the view that

the impugned order passed by the first respondent is not sustainable in law and liable to be set aside and accordingly, it is set aside. The writ

petition is allowed. No costs. Connected miscellaneous petitions are closed.

11. In the event of first respondent having recovered any amount from the petitioner, the first respondent shall refund the same to the petitioner

forthwith. However, it is open to the first respondent to refix the salary of the petitioner in accordance with law, after giving notice to the petitioner, but it does not mean that the amount should be recovered from her pay after refixation.