(2008) 12 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No''s. 31734 of 2004 and 6106 and 22986 of 2005

H. Mohamed John, S. Vincent De Paul and S. Kumarasamy — APPELLANT

Vs

The State of Tamil Nadu and Others — RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

Citation : (2008) 12 MAD CK 0097

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : S.M. Subramaniam, for the Appellant; L.S.M. Hasan Fizal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—By consent of both sides, the writ petitions are taken up for final disposal.

2. The petitioners challenge the impugned orders of recovery passed against them by the respondents concerned.

3. The petitioners herein are working as Divisional Accountant in the office of the third respondent. According to the petitioners, the post of

Divisional Accountant is filled amongst the persons working in the cadre of Office Superintendent, who acquired the requisite qualification of

Divisional Accountant Grade Examination, conducted by the Accountant General for maintenance of Accounts and Auditing. Petitioners were

already working as Office Superintendents in the scale of pay of Rs. 5700-175-9200 and by virtue of the special and technical qualifications, they

were appointed as Divisional Accountants by transfer and they are holding the said post carrying scale of pay of Rs. 5900-200-9900.

4. The grievance of the petitioners is that without considering these factors, the first respondent issued letter dated 2.6.2003 stating that 52

Superintendents have been appointed as Divisional Accountants only based on their seniority in the category of Assistants and they are not entitled

for fixation of pay taking into account the pay drawn by them in the post of Superintendent. Accordingly direction was given to re-fix the pay of all

52 Divisional Accountants on the date of appointment as Divisional Accountant and recover the excess pay. Pursuant to that, the third respondent

has passed the impugned recovery orders. Hence the writ petitioners have filed the above writ petitions contending that they were already

promoted as Superintendents and by virtue of their special qualifications, they were appointed as Divisional Accountants, and hence they cannot be

fixed with the scale of pay of the post of Assistant for the period in which they were actually working as Office Superintendents and such a concept

is erroneous and unknown to service law.

5. The learned Counsel for the petitioners submits that without any misrepresentation or furnishing wrong details by the petitioners, the respondents

fixed the scale of pay of the petitioners and now without giving any opportunity of hearing, the third respondent has passed the impugned orders of

recovery. The learned Counsel for the petitioners further submitted that the issue as to whether any recovery could be made from the salary

already paid to an employee without any misrepresentation or suppression of fact was considered and it is held that no recovery could be made

from the salary already paid.

6. It is not the case of the respondents that the petitioners have suppressed or mislead the respondents to fix the scale of pay pursuant to their

promotion. In the absence of any suppression of facts or misleading statement, for the promotion having been given, the payment already made

cannot be recovered.

7. In the light of the above submissions and following the decisions of the Supreme Court reported in (1995) 1 SCC (supp) 18 (Sahib Ram v.

State of Haryana) and Babulal Jain Vs. State of M.P. and Others, and the decisions of the Division Bench of this Court reported in 2006 (3) LLN

461 (D. Palavesamuthu v. Tamil Nadu Administrative Tribunal) and (2006) 3 MLJ 1025 (P. Arumugam v. Registrar, Tamil University) and the

decision of mine reported in (2006) 1 MLJ 695 (S.A. Kanthimathi v. Director of School Education, Madras), I hold that the impugned orders of

recovery cannot be sustained.

8. In the result, the writ petitions are allowed and the impugned orders of recovery passed by the respondents concerned are set aside. The

respondents are directed to issue notice to the petitioners, hear their objections, if any, and then proceed with the re-fixation of pay. No costs.

Connected miscellaneous petitions are closed.

