

(2014) 06 MAD CK 0081

In the Madras High Court

Case No : W.P. No. 8539 of 2007 and O.A. No. 5182 of 2007

P. Arumugam

APPELLANT

Vs

Accountant General

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0081

Hon'ble Judges : Krishna Ballabh Narayan Singh, J

Bench : Single Bench

Judgement

K.B.K. Vasuki, J.—The short point that arises for consideration herein is as to whether the petitioners are liable to repay the excess amount, which was paid to them by way of bonus increment by the department, without any fraudulent act or misrepresentation from their side, that too without any notice to them.

2. The few facts, which are relevant for consideration herein are as follows : The petitioners 1, 3 and 4 were appointed as Higher Grade Teachers with Secondary Grade Qualification on 01.09.1962, 4.9.1963 and 30.10.1965 respectively and they were promoted as Headmaster of Elementary School on 1.10.1965, 4.9.1964 and 12.6.1966 respectively. The second petitioner was initially appointed as Headmaster of Elementary school and posted at Veraiyur on 11.7.1961. Thereafter, they were awarded selection grade and special grade in the cadre of Headmaster of elementary school. While so, the Government issued GO.Ms.No.562 Finance Department dated 28.09.1998, in and under which, the persons who have completed 30years of service in the same post and ten years service in the Special Grade, can be granted one bonus increment. Pursuant to the same, all the petitioners were, by the order of the second respondent dated 24.8.1999, granted one bonus increment and the petitioners retired from service, after attaining the age of superannuation. Thereafter, the second respondent passed the impugned order dated 04.06.2002 to recover bonus increment granted to the petitioners. Challenging the same, the petitioners approached the Tamil Nadu Administrative Tribunal by way of O.A.No.5182/2002

and the same was subsequently transferred to this Court and renumbered as the present writ petition.

3. Heard the rival submissions made on both sides.

4. The issue involved herein is already dealt with by the Hon''ble Apex Court and the Division Bench and single judge of this Court on more than one occasion. The Hon''ble Supreme Court in the authority reported in Sahib Ram Vs. State of Haryana and Others, observed that for upgraded pay scale given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee, the employee cannot be held to be fault and under the circumstances the amount paid till date may not be recovered from the employee.

5. The Hon''ble Apex Court in the judgment reported in Syed Abdul Qadir and Others Vs. State of Bihar and Others, has laid down that the recovery of excess amount not paid on any account of misrepresentation or fraud on the part of the employee or made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of particular interpretation of rule/order which is subsequently found to be erroneous, is not permissible and whenever any excess amount is paid due to negligence and carelessness of the officials concerned, the employee cannot be punished by effecting recovery.

6. The Division Bench of this court in the decision reported in D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, was 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 argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is a fault committed by the department and the officers, for which the petitioner should not be penalised after lapse of number of years that too after retirement of the petitioner.

7. The Division Bench of this Court in The Chief Engineer(General) Public Works Department, The Chief Engineer (Buildings) Public Works Department and The Executive Engineer, Public Works Department Vs. M. Thanasekaran, has observed that if the excess payment is made by the State even though by mistake, such excess payment cannot be recovered. The same view was also expressed by the learned single judge of this Court in P. Seethalakshmi Vs. The District Treasury Officer and The Sub-Treasury Officer, wherein this Court has set aside the recovery order issued without any notice and without even any written order to the petitioner. While doing so, it is also observed therein that the action of the respondents in effecting recovery from pension without even any written order is highly arbitrary and in violation of principles of natural justice and even the minimum requirement of principles of natural justice was not observed, while taking an adverse decision to effect recovery of the pension. In the latest judgment of this Court reported in K. Kumaran Vs. Central Pension Accounting Office, Trikoot-2 and Others, the amount which was recovered from the pension as excess payment is directed to be refunded to the employee.

8. In my considered view, the principles laid down by the Hon''ble Supreme Court and our High Court in the decisions cited above are squarely applicable to the facts of the present case, wherein the excess amount paid is not on the basis of any misrepresentation or fraud on the part of the employee and the recovery order is issued without any notice to the petitioner and without seeking any explanation for the same and without giving him any personal hearing, as such, the same is perse arbitrary, contrary to law and stands vitiated.

9. In the result, the impugned order passed by the second respondent stands quashed and direction is issued to the respondents to refund the amount already recovered or withheld, if any, to the petitioners within four weeks from the date of receipt of the copy of this order. The writ petition is accordingly ordered. No costs.