
(2011) 01 MAD CK 0454
In the Madras High Court
Case No : Writ Petition No. 19628 of 2004

P. Muthaiyan

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0454

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : V. Ravikumar, for the Appellant; Dakshayani Reddy, A.G.P. For RR 1 to 4, for the Respondent

Judgement

R. Banumathi, J.—The Petitioner seeks writ of certiorarified mandamus to quash the proceedings of the fourth Respondent passed in Na. Ka. No. 1883/A1/2003 dated 4.11.2003, 14.11.2003 and the proceedings of the fifth Respondent passed in Na. Ka. No. 6167/2003/D1 dated 19.11.2003 and consequently direct the Respondents to revise the Petitioner's monthly pension at the rate of Rs. 4,000/-.

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

The Petitioner was appointed as Higher Grade Teacher in Raja Aided Elementary School, Vedichipalayam, Karur District on 25.1.1954 and subsequently absorbed into Board's School and was appointed as Higher Grade Headmaster on 20.3.1957. Then the Petitioner was appointed in the Panchayat Union Elementary School as Second Grade Headmaster on 1.4.1963. On completion of ten years of service, the Petitioner was awarded Selection Grade in 1973 and was awarded Special Grade in 1983. The Petitioner has put in 33 years of service including 24 years of service in the post of Primary School Headmaster and retired on superannuation on 30.6.1987 and thereafter re-employed and retired from service on 31.5.1988.

3. During the year 1998, Government issued G.O. Ms. No. 427 Finance Department dated 28.8.1998 in which Selection Grade and Special Grade Scale

of pay in the following posts have been revised from 1.1.1996 as under:

Secondary Grade Teacher:

Secondary Grade Teacher : Ordinary Grade : 4500 # 125 # 7000 Selection Grade : 5300 # 150 # 8300 Special Grade : 5900 # 200 # 9900 Elementary School Headmaster : Ordinary Grade : 5300 # 150 # 8000 Selection Grade : 6500 # 200 # 10500 Special Grade : 8000 # 275 # 13500

4. Subsequently, the Government issued G.O. Ms. No. 200 Finance (Pay Cell) Department dated 18.5.1999 revising pension/family pension of those who retired prior to 1.1.1996. As per the said G.O., in the case of employees, who have retired from service prior to 1.1.1996, the revised pension shall be calculated at 50 percent of the minimum of that time scale of pay introduced with effect from 1.1.1996 applicable to the post last held by the employees at the time of his/her retirement.

5. The case of Petitioner is that he has been awarded Selection Grade even in 1973 and awarded Special Grade in 1983 and therefore he is entitled to the revised scale of pay of Rs. 8000-27513500 and he has been paid pension based on the above time scale of pay and while so the impugned recovery proceedings has been wrongly issued. The grievance of the Petitioner is that without giving any notice to the Petitioner Respondents No. 3 and 4 have passed the impugned order of recovery by the proceedings dated 19.11.2003.

6. The learned Additional Government Pleader has submitted that the Department has filed a detailed counter affidavit stating that as per the orders issued in G.O. Ms. No. 200 Finance dated 18.5.1999, the Petitioner is entitled to revised scale of pay of Rs. 5900 # 200- 9900, whereas his pension was wrongly fixed taking into account the Special Grade Primary School Headmaster service and therefore the Respondents 3 and 4 rightly passed the impugned proceedings ordering recovery of excess payment. The recovery of excess payment is stated to have been made by taking into account the Special Grade Primary School Headmaster service.

7. It is fairly well settled that any recovery of excess payment made not on account of any misrepresentation on the part of the employee cannot be made, as the same has been held in catena of decisions. 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. 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. 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. 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. 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. 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. In the decision of the Supreme Court, in *State of Bihar and Ors v. Pandey Jagdishwar Prasad* 2008 (1) UJ 197 (SC), 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. 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. 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. 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 his case, the impugned order of recovery was quashed.

8. In view of the submissions of the learned Counsel for the Petitioner and in view of the decisions cited above, the impugned proceedings of the 4th respondent passed on 14.11.2003 and 5th Respondent dated 19.11.2003 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 Petitioner in accordance with law after affording reasonable opportunity to the Petitioner to put forth his case. Any payment made during the pendency of the writ petition would be subject to the final orders to be passed. The writ petition is ordered accordingly. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.