

(2009) 09 MAD CK 0274

In the Madras High Court

Case No : Writ Petition No. 5802 of 2007

R. Gurusamy

APPELLANT

Vs

The District Treasury Officer and The Sub-Treasury Officer

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2009) 09 MAD CK 0274

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : S. Padma, for the Appellant; C.K. Vishnu Priya, Additional Government Pleader, for the Respondent

Judgement

D. Hariparanthaman, J.—The Original Application in O.A. No. 1744 of 2002 before the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal") is now Writ Petition in W.P. No. 5802 of 2007 before this Court.

2. Heard Dr. S. Padma, learned Counsel for the petitioner and Mrs. C.K. Vishnu Priya, learned Additional Government Pleader for the respondents.

3. The petitioner entered into Teaching Service on 07.07.1962 and retired as Tamil Pandit in the Girls Higher Secondary School, T. Vadipatti, Madurai District, when he was retired on reaching the age of superannuation on 30.06.1997. Since he was retired in the middle of the academic year, he was re-employed until the end of the academic year. Hence he was re-employed in the service from 30.06.1997 to 31.05.1998 . He was paid pension from the date of retirement. Later, the pension was revised with effect from 30.06.1997, as he was retired on 30.06.1997.

4. The Regional Joint Director of Treasuries and Accounts, Madurai in his notes of inspection of the Sub-Treasury for the year 2001, pointed out that as per the Government letter No. 39187/Fin/PC/2000-1 dated 22.03.2001, the increase in pension by way of revision for the period 01.01.1996 to 31.03.1998 would not be

allowed for the re-employment period and the revised pension would take effect only on expiry of re-employment. The Regional Joint Director instructed the Sub-Treasury Officers to calculate the excess amount paid to teachers during the period of re-employment between 01.01.1996 to 31.03.1998 towards the payment of revised pension and directed to recover the excess payment from the Dearness Allowance of pensioners, in instalments.

5. But the inspection made by the Joint Director and his notes of inspection and also his instructions to the subordinates to recover the excess amount paid i.e., the difference between the revised pension and earlier pension for the re-employment period that fell between the period 01.01.1996 to 31.03.1998, were not made known to the concerned teachers, including the petitioner. Further, no written order regarding the recovery to be made from the pension was given to teachers concerned, including the petitioner.

6. In these circumstances, when pension for the month of December 2001 was paid, in the first week of 2002, a sum of Rs. 1000 was deducted from the pension amount towards first instalment. The petitioner came to know only after the receipt of reduced pension, that instructions were issued for recovery, without any written order to petitioner. Hence the petitioner filed O.A. No. 1744 of 2002 (W.P.No.5802 of 2007) praying for a direction to respondents to pay the pension from December 2001 as paid in earlier months, without any recovery.

7. Heard Dr. S. Padma, learned Counsel for the petitioner and Mrs. C.K. Vishnu Priya, learned Additional Government Pleader for the respondents.

8. The learned Government Advocate submits that the petitioner is not entitled to revised pension for the period of his re-employment between 30.06.1997 to 31.05.1998 as per the letter of the Government of Tamil Nadu in Government letter No. 39187/Fin/PC/2000-1 dated 22.03.2001 and that therefore the excess amount paid was sought to be recovered correctly.

9. On the other hand, the learned Counsel for the petitioner submits that the revision in the pension was paid by the respondents on their own and it was neither due to any fraudulent act on the part of the petitioner nor it was due to any misrepresentation, on the part of the petitioner; originally, the petitioner was paid pension from the date of re-employment and it was subsequently revised. Hence, the petitioner was paid revised pension and the same was sought to be recovered after about five years without notice and without even any written order. The learned Counsel contends that the action of the respondents in effecting recovery from pension without even any written order is highly arbitrary and violative of Articles 14 and 21 of the Constitution of India.

10. I have considered the submissions made by the learned Counsel on either side. Admittedly, the recovery is sought to be made without any written order. The petitioner was not put on notice and no details were furnished to the petitioner as to why there was recovery from the pension and as to the quantum of the amount that would be recovered. No written order was passed and no

reason was given for effecting recovery from pension. Hence, it is clear that the respondents acted arbitrarily and in violation of the principles of natural justice. Even the minimum requirements of principles of natural justice was not observed, while taking an adverse decision to effect recovery on the pension.

11. Furthermore, the entitlement to pension from the date of retirement is not disputed. The respondents stated that revision of pension cannot be given for the re-employment period, when the re-employment period fell between 01.01.1996 and 31.03.1998. It is stated by the respondents that the petitioner was wrongly given the revision in pension for his re-employment period, necessitating the recovery to be made, so as to rectify the mistake.

12. From the facts, it is very clear that the revision in pension paid by the respondents was on their own volition and the same was not made pursuant to any fraudulent act or not by due to any misrepresentation on the side of petitioner, as correctly contended by the learned Counsel for the petitioner. In these circumstances, if any amount was paid by mistake by the Department, the petitioner cannot be made to suffer for such a mistake particularly when those mistakes occurred at a distant point of time and also particularly when the petitioner is a pensioner.

13. The Hon''ble Apex Court has categorically held in various decisions that if any excess payment was made by the Department to an employee, not due to any misrepresentation from him, the Department cannot seek to recover the excess payment, later. After referring to the earlier decisions in *Sahib Ram Vs. State of Haryana and Others*, , *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.* , *The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others*, , the Hon''ble Apex Court, held in the decision reported in *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, that the Department cannot resort to recovery of excess amount if the said excess amount was paid not due to any misrepresentation on the part of the concerned employee. Paragraph 5 of the judgment reported in *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, (referred to supra) is extracted hereunder in this regard:

5. Admittedly the Appellant does not possess the required educational qualifications. Under the circumstances 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 his 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 circumstances 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.

14. A Division Bench of this Court in the case of D. Palavesamuthu Vs. The Tamil Nadu Administrative Tribunal, has followed the decision of the Apex Court in Sahib Ram case, referred to above, and in paragraph 6, it has been laid down as under:

We are 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 the argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers, for which the petitioner should not be penalised after a lapse of number of years that too after retirement of the petitioner.

15. In view of the categorical pronouncement of the decisions of the Hon''ble Apex Court and this court, referred to above, the writ petition is entitled to succeed and accordingly a direction is issued to the respondents not to recover from the pension payable to the petitioner towards the excess amount paid pursuant to the revision in pension for the re-employment period of the petitioner.

16. With the aforesaid direction, the writ petition is disposed of. No costs.