
(2007) 02 MAD CK 0001

In the Madras High Court

Case No : W.A. No. 175 of 2007 and M.P. 1 of 2007

R. Premakumari

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Citation : (2008) 1 MLJ 358

Hon'ble Judges : A.P. Shah, C.J;K. Chandru, J

Bench : Division Bench

Advocate : M.C. Swamy, for the Appellant; M. Sekar, Special Govt. Pleader, for the Respondent

Judgement

K. Chandru, J.—This writ appeal is filed by the appellant against the order of the learned single Judge dated 17.10.2006 made in W.P.No.

1260 of 2001 wherein and by which the writ petition filed by the appellant was dismissed.

2. The appellant is working as a Post Graduate Assistant in English in the fourth respondent School for the last four years. She had obtained M.A.

English in the year 1983 and qualified in B.Ed., in 1997. Thereafter, she got M.Phil degree in the year 1989 and M.Ed. Degree in the year 1991.

Further, she also got Post Graduate degree in Sociology in the year 1993. The appellant was grantee incentive increment, in terms of the

qualification provided. However, the second respondent had issued a Circular stating that the teachers, who were appointed from the period

01.01.1996 till 13.4.1998 should not be fixed in the revised pay scale by giving credit to the incentive increments as at the time of pay revision, the

incentive increments have been absorbed in the scale Pursuant to the circular dated 18.10.2000, recovery was sought to be made.

3. The appellant had challenged the same before the learned single Judge and had obtained interim order against the recovery. Before the learned

Judge, it was argued by the learned Counsel appearing for the respondents that the appellant is not eligible for higher fixation and the order of the

Government was in order. Paragraph 5 of the counter affidavit dated 28.02.2006 is extracted below:

5. It is submitted that the Tamilnadu revised scales of pay Rules 1998 came into force with retrospective effect from 1.1.96 in G.C.Ms. No. 162

Fin.(PC) Department dated 13.4.98. Therefore the Teachers and others appointed in between the period from 1.1.96 to 13.4.98 would have

been paid salary in the pre revised pay scale. Hence the Director of School Education, Chennai in his proceedings Rc. No. 147502/K2/2000

dated 18.10.2000 has issued instructions not to fix the pay of such of those teachers straight away in the Revised Pay scale as ordered in G.O.Ms.

No. 162 Fin.(PC) Department dated 13.4.98 & G.O.Ms. No. 427 Fin. (PC) Department dated 28.8.98 from their date of appointment by

granting incentives for the reason that the incentive increment benefit for higher qualification if any has already been taken into account in the fitment

table prepared & issued by the Government in the Government orders referred to above. Any erroneous sanction of monetary benefit is liable to

be recovered.

4. The learned Judge, accepting the stand of the Department held that the appellant had not made out any case and that any amount paid on

erroneous understanding of the Government orders can always be recovered. On the question of prior notice for recovery, the learned Judge

recorded a finding in paragraph 9 of the order under appeal, which reads as follows:

9. Learned Counsel for the petitioner has contended that the incentive increments paid to the Petitioner are not to be recovered and the recovery

made without notice is unjustified. The erroneous calculation of the revised pay scale and the excess drawal of pay has been noticed during the

audit. If the contention of the Petitioner is to be accepted, it will have serious implication on the Government servants. When the pay scale is

regularised automatically, the excess drawal is to be recovered. The impugned order does not suffer from any error of law or fundamental flaw

warranting interference.

Aggrieved at the same, the present appeal has been preferred by the appellant.

5. This Court at the time of issuing notice to the other side, vide order dated 09.02.2007 ordered stay of recovery.

6. We have heard Mr. M.C. Swamy, learned Counsel appearing for the appellant and Mr. M. Sekar, learned Special Government Pleader

representing the respondents and have perused the records.

7. Mr. M.C. Swamy, learned Counsel appearing for the appellant stated that in terms of the judgment of the Division Bench of this Court reported

in 2006 3 M.L.J. 1025 [P. Arumugam v. Registrar, Tamil University, Thanjavur], even if the amount is paid erroneously, the same cannot be

recovered. In that case, this Court has held that since the respondent University was responsible for wrong fixation of pay the employee cannot be

blamed on that score. Therefore, having regard to the various factors, the respondent University was restrained from attempting to reverse the

whole process of pay fixation and the liability has to be borne for the wrong fixation by the University itself.

8. We do not think that such a judgment lays down any principle of law for all time to come. In the case, the pension amount was sought to be

deducted on the plea that the earlier pay fixation was wrong after retirement. We do not think that the said decision will have any application to the

facts of the present case.

9. The second ground of attack by the learned Counsel appearing for the appellant is that the finding of the learned Judge found in paragraph 9 is

erroneous that even if it is a case of wrong fixation, the employee is entitled for notice and, therefore, this Court must follow the decision of the

Supreme court reported in Sahib Ram Vs. State of Haryana and Others, . In that decision, it is clearly stated by the Supreme Court, that even if

wrong fixation has been made by the authorities, when recovery of the same is made, minimum principle of natural justice has to be followed and,

therefore, the employee is entitled for notice. We are bound to follow the said binding ratio. Therefore, the order of the learned Judge found in

paragraph 9 of the order to that extent is legal and proper.

10. Under the above circumstances, we hereby direct the second respondent to give a notice to the appellant with reference to the recoveries to

be made and justification for the same within a period of four weeks from the date of receipt of a copy of this order and personal hearing may be

granted by the second respondent. After hearing the objections of the appellant, the second appellant is directed to pass a speaking order and

communicate the same to the appellant. Till decision is taken, the respondents are restrained from making any recovery of any amount from the

salary of the appellant.

11. The writ appeal shall stand disposed of with the above directions. However, there will be no order as to costs. Consequently, connected

Miscellaneous Petition will also stand closed.