

(2009) 06 MAD CK 0216

In the Madras High Court

Case No : Writ Petition No. 3440 of 2007 and O.A. No. 232 of 2001

S. Venkatesan

APPELLANT

Vs

The Assistant Elementary Education Officer

RESPONDENT

Date of Decision : 11-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 06 MAD CK 0216

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V. Kathiravan, for the Appellant; V. Arun, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

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

The petitioner, who is a Post Graduate in Arts and Education, had joined in service, on 2.11.1987. His initial appointment in the post of Secondary Grade teacher was on contract basis. Thereafter, his service, as a Secondary Grade teacher, was regularised and he was brought into regular appointment, with effect from 1.6.1988. While so, the petitioner had been awarded with an increment for his qualification as a Post Graduate in Arts, with effect from 1.6.1988, which is the initial date of his regular appointment. The petitioner has been drawing his salary, along with the incentive increment, as per the orders of the respondent, dated 24.12.1992, with effect from 1.6.1988. However, the respondent had passed the impugned order seeking to recover the amount paid to the petitioner as increment. In such circumstances, the petitioner had preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

3. A reply affidavit has been filed on behalf of the respondent denying the claims made by the petitioner. It has been stated that the respondent had ordered for the recovery of the excess amount paid to the petitioner by way of irregular sanction of increment, since it was against the Government Order. The recovery has been ordered only with the intention of rectifying the mistake which had been committed. The petitioner is not entitled to the benefit of the incentive increment for having higher qualifications.

4. The recovery of the excess amount said to have been paid to the petitioner cannot be made, as held by this Court in its order, dated 27.6.2008, made in W.P. No. 16150 of 2006 and as held in the following decisions:

4.1) 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.

4.2) 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.

4.3) 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.

4.4) 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.

4.5) 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.

4.6) 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.

4.7) In the decision of the Supreme Court, in *State of Bihar and Others Vs. Pandey Jagdishwar Prasad*, , 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."

4.8) 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.

4.9) In *D. Palavesamuthu v. T.N. Administrative Tribunal* (2006) (III) 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.

4.10) 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 her case, the impugned order of recovery was quashed.

5. In view of the submissions made by the learned Counsel appearing on behalf of the petitioner, and in view of the decisions cited above, the impugned order of the respondent, passed in Na.Ka. No. 186/A1/2000, dated 18.11.2000, is set aside, in so far as it relates to the recovery of the amounts already paid to the petitioner as increment. Accordingly, the writ petition is allowed, as noted above. No costs.