

(2011) 08 MAD CK 0222

In the Madras High Court

Case No : Writ Petition No. 2946 of 2006 and W.P. M.P. (MD) No. 3224 of 2006

Smt. A. Prakasi

APPELLANT

Vs

The Accountant General, (Accounts and Entitlement), The
District Educational Officer and The Correspondent, St.
Mary's Higher Secondary School

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0222

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S. Bharathi Kannan, for the Appellant; C. Saravana Kumar, for R-1,
D. Muruganandam, Additional Government Pleader for R-2 and Isaac Mohanlal,
for R-3, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioner has approached this Court, with a prayer for issuance of a Writ, in the nature of Certiorari, to quash the impugned order dated 21.06.2005, ordering recovery of the excess payment, made towards bonus increment.

2. The petitioner, while working as B.T. Assistant, was awarded one bonus increment in the year 1998. On attaining superannuation, the petitioner retired from service on 31.05.2005. After the petitioner retired from service, without issuing any show cause notice, the impugned order was passed, ordering recovery of bonus increments paid to the petitioner.

3. In the counter affidavit filed by the first respondent, it has been stated, that the petitioner was entitled to bonus increment.

4. The contention of the learned counsel for the petitioner, is that once the stand of the first respondent is, that the petitioner is entitled to bonus increment, there was no question of recovery, and in any case, no recovery can be ordered,

without following the principles of natural justice, and further alleging misrepresentation or fraud against the employee, in getting the benefit sought to be recovered.

5. On consideration, I find force in the contention of the learned counsel for the petitioner.

6. Besides the fact, that the first respondent has taken a positive stand, that the petitioner was entitled to bonus increment, even in absence thereof, it is not open to the respondents to recover an amount paid to an employee, even erroneously, in absence of allegations of misrepresentation or fraud on the part of the employee in getting that benefit.

7. In the present case, there were no allegations of misrepresentation or fraud against the petitioner.

8. Therefore, no recovery from the pensionary benefit or pension payable to the petitioner could be ordered.

9. The impugned order, otherwise is also, not sustainable in law, as it was passed in violation of the principles of natural justice.

10. For the reasons stated hereinabove, this writ petition allowed, the impugned order of the second respondent is quashed.

No costs. Consequently, the connected W.P.M.P.(MD) No.3224 of 2006 is closed.