

(2011) 11 KAR CK 0156

In the Karnataka High Court

Case No : Writ Petition No. 5679 of 2008 (S-RES)

Smt. Mary Mohanraj

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0156

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : C. Goulay, for the Appellant; Raghavendra G. Gayathri, HCGP for R1 to R4, R5 served, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy

1. Heard the learned Counsel for the petitioner.
2. The learned Government Pleader seeks time to file statement of objections. However, the Petition is considered for final disposal having regard to the facts and circumstances.
3. The petitioner was said to be appointed as a Physical Education Teacher in the year 1971. She had continued in such capacity till filing of the present Writ Petition. She was entitled to a pay scale of Rs. 130-210/- as against Rs. 100-220/-. In this behalf, the petitioner had approached this Court by way of a Writ Petition in W.P.No. 10205-206/1994, along with another, seeking the relief of assignment of pay scale from the date of her appointment. The petition was allowed with a direction to consider her case to fix the pay scale of Rs. 130-210 with effect, from the date of her appointment and accordingly, her pay was fixed and approved by the third respondent as on 31.08.1994 and the petitioner enjoyed the benefit along with arrears like others in the Department. However, she was issued a notice by the Block Education Officer, respondent No. 4 herein, calling upon her to showcause as to why recovery should not be affected of the

excess salary paid to her from 30.07.1998. The petitioner had replied to the same, while drawing attention to the order of this Court and also the order passed by the Government in that regard. The third respondent however, without considering the reply and without reference to the earlier orders has issued a communication to the fourth respondent to recover the amount from the petitioner and to report the same accordingly. This was forwarded to the fifth respondent-College as on 10.09.2007 and the respondents without any further notice or opportunity of hearing to the petitioner have insisted upon recovery of the amounts from the salary of the petitioner. It is in this background that the petitioner is before this Court.

4. From the above facts and circumstances, the petitioner having been paid a particular salary by virtue of orders passed by the Government and the petitioner having received the same, not account of any fraud played by her nor by misrepresentation, but the same having been paid pursuant to a direction by the Government and the same being sought to be recovered on the footing that she was not entitled to such higher pay scale would not enable the respondents to recover the salary which was already paid. This legal position is well settled having regard to a catena of decisions which have been consistently followed by this Court.

5. Accordingly, the learned Government Pleader seeking to file objections in the above circumstances would be futile and there is no substance in the objections raised, that the petitioner has been conferred with undue benefit, which she was not legally entitled. Since as already stated, the payment of such higher pay scale was not at the instance of the petitioner, but by virtue of appropriate orders passed by the competent authority, the question of recovery of the same, even if it was erroneously paid does not arise. It is also stated that the petitioner has retired from service. Hence, the plea of the learned Government Pleader that the respondents ought to be given an opportunity to refix the salary would also be infructuous, since the petitioner has retired from service and the question of refixing the salary and recovering the arrears does not arise.

6. Accordingly, the petition is allowed. The impugned order seeking to recover the salary paid to the petitioner is hereby quashed.