
(2009) 06 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No. 48398 of 2006 and O.A. No. 293 of 2001

T. Baby Chandrabai

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Citation : (2009) 06 MAD CK 0078

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

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

Judgement

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

the respondents.

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

The petitioner has obtained the qualification of B.Litt., in the year, 1975 and she had also undergone Pandit Training Course in the year, 1984 and

had obtained a Masters Degree in Tamil in the year, 1996. She was appointed as B.T. Tamil Pandit, on 22.11.1996. While so, she was

sanctioned one set of incentive increments for acquiring M.A. Qualification, from 22.11.1996, in the month of September, 1998. The scale of pay

of the petitioner, which was Rs. 1400/- had been revised, as per the Tamil Nadu Revised Scale of Pay Rules, 1998. Accordingly, the scale of pay

had been fixed at Rs. 5500/-, with effect from 1.1.1996. Thereafter, based on her request, two incentive increments were given to the petitioner

for her higher qualification, from 22.11.1996. Thereafter, her scale of pay had

also been revised. While so, the Government of Tamil Nadu had issued orders, in Letter No. 1661/E2/2000-4, School Education Department, dated 12.2.2000, whereby, it has been directed that the incentive increments should not be given in the revised scale of pay and therefore, the second respondent had instructed that the incentive increments, already sanctioned in the new scale of pay, were to be recovered from the salary of the concerned persons. In such circumstances, the petitioner has preferred the present writ petition before this Court.

3. At this stage of the hearing of the writ petition the learned Counsel for the petitioner had placed before this Court, various decisions passed by this Court under similar circumstances, holding that the recovery of the salaries paid or incentives granted cannot be recovered, unless it was due to misrepresentation or fraud committed by the petitioner. The learned Counsel for the petitioner had submitted that there was no misrepresentation or fraud on the part of the petitioner based on which the incentives had been granted to her.

4. The learned Counsel appearing on behalf of the respondents had not refuted the submissions made by the learned Counsel appearing on behalf of the petitioner.

5. 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) (3) 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.

6. 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 2nd respondent, in proceedings No. 641E/2000, dated 29.12.2000, is set aside, in so far as it relates to the recovery of the

amounts already paid to the petitioner as incentive increments.

7. However, the petitioner is permitted to make a representation to the first respondent, with regard to his claim for re-fixation of the pay scale and

for claiming additional increments, if any, within a period of fifteen days from today and on such representation being made, the first respondent is

directed to dispose of the same, on merits and in accordance with law, within a period of twelve weeks thereafter.

Accordingly, the writ petition is disposed of, with the above directions. No costs.