



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

WEDNESDAY, THE TWENTY NINETH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 46460/2018

Between:

- 1.SMT. P. VARALAKSHMI, D/O. RAMULU, AGED 61 YEARS, R/O. H.NO. 2-14, BAVARAJAPALEM (V), RANASTHALAM (POST AND MANDAL) SRIKAKULAM DISTRICT - 532407.

...PETITIONER

AND

- 1.THE STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL SECRETARY, FOOD AND AGRICULTURE AND COOPERATION DEPARTMENT, SECRETARIAT, HYDERABAD.
- 2.THE COMMISSIONER, FOR COOPERATION AND REGISTRAR OF COOPERATIVE SOCIETIES, STATE OF ANDHRA PRADESH, HYDERABAD.
- 3.THE DISTRICT COOPERATIVE AUDIT OFFICER, SRIKAKULAM DISTRICT.
- 4.THE DIVISIONAL COOPERATIVE OFFICER, SRIKAKULAM, SRIKAKULAM DISTRICT.
- 5.THE RANASTHALAM FARMERS COOPERATIVE SOCIETY LIMITED, RANASTHALAM, SRIKAKULAM DISTRICT, REP. BY ITS PRESIDENT.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature

of writ of Mandamus declaring the impugned action of the Respondents 3 and 4, in issuing directions to the 5th respondent Society for effecting recovery of salaries drawn by the petitioner, for service rendered by her after crossing 58 years till Superannuation i.e. up to 60 years i.e. 30.06.2017 as highly illegal, arbitrary and violative of Article 14 of the Constitution of India and contrary to the provisions of A.P. Pubic Employment (Regulation of Age of Superannuation) Act, 1984 and principles of natural justice and pass

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant Interim stay of recovery of salaries drawn by the petitioner, for the service rendered by the petitioner i.e. 31.07.2015 to 30.06.2017 pending disposal of the above writ petition and pass

Counsel for the Petitioner:

1.G V SHIVAJI

Counsel for the Respondent(S):

1.GP FOR COOPERATION (AP)

The Court made the following:

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“....to issue a writ order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the Respondents 3 and 4 in issuing directions to the 5th respondent Society for effecting recovery of salaries drawn by the petitioner for service rendered by her after crossing 58 years till Superannuation i.e., up to 60 years i.e., 30.06.2017 as highly illegal, arbitrary and violative of Article 14 of the Constitution of India and contrary to the provisions of A.P. Pubic Employment Regulation of Age of Superannuation Act 1984 and principles of natural justice and pass....”

2. The petitioner was initially appointed as a Clerk in the 5th respondent Society in February, 1984 and was subsequently promoted as Accountant in the vacancy caused due to retirement in the year 2013. As the petitioner was reaching 58 years, which was prescribed as age of superannuation under the service regulations, she made a request for continuation in service till attaining the age of 60 years, in view of the amendment made to the provisions of the Andhra Pradesh Public Employment (Regulation of Age at Superannuation) Act, 1984 vide Act No.4 of 2014, which came into force with effect from 02.06.2014. By virtue of said amendment, the age of superannuation of Government employees was enhanced from 58 years to 60 years.

3. The case of the petitioner is that, in pursuant to the said amendment, the services of employees working in co-operative societies governed by the

service regulations framed under the provisions of the A.P. Co-operative Societies Act were also continued till they attained the age of 60 years. It is stated that a proposal was sent to the Government seeking amendment of the age of superannuation from 58 years to 60 years in respect of employees of co-operative societies. Thereafter, the 5th respondent Society passed a resolution dated 26.08.2015 approving the decision taken by the Managing Committee vide resolution dated 30.06.2015 enhancing the age of superannuation from 58 years to 60 years. As the 4th respondent objected to the said resolution, the petitioner filed W.P.No.35873 of 2015, wherein this Court passed an interim order directing the respective organization, i.e., the 5th respondent Society, to take a decision by 31.07.2016 and further directed continuation of the petitioner in service till such time. Pursuant to the said interim order, the petitioner continued in service till she attained the age of 60 years and retired from service on 30.06.2017.

4. The grievance of the petitioner in the present writ petition is that the 5th respondent is intending to recover the salary paid to her for the period from 31.07.2015 to 30.06.2017, during which period she admittedly rendered service. Hence, the present writ petition.

5. On 21.12.2018, while admitting the writ petition, this Court granted interim stay of recovery of the salary drawn by the petitioner for the period from 31.07.2015 to 30.06.2017, since the petitioner was admittedly permitted by the respondents to continue in service up to 30.06.2017.

6. Admittedly, in the present case, the petitioner was continued in service till attaining the age of superannuation i.e., till 30.06.2017 and the respondents utilized her services during the said period. In such circumstances, the 5th respondent Society is not justified in seeking recovery of the salary already paid to the petitioner for the services rendered by her.

7. The issue of recovery of excess payment made to the employees came up for consideration before the Hon'ble Apex Court in **Thomas Daniel vs. State of Kerala and others**¹ having considered its earlier decisions, held that recovery of excess payment is not permitted where there is no misrepresentation or fraud on the part of the employee and where the excess payment was made by applying a wrong interpretation of a Rule/Order. The relevant paragraphs of the said judgment are as under:

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable.....

11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an incidental question as under:

“27. The last question is to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled

¹ 2022 SCC OnLine SC 536

- (a) *The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*
- (b) *Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of

the amount that has been paid in excess to the appellant teachers should be made.”

8. In the present case, admittedly, there is no misrepresentation or fraud on the part of the petitioner in receiving the salary for the period from 31.07.2015 to 30.06.2017 since the petitioner continued in service during the said period and salary was paid to her for the services rendered by her. Therefore, the salary paid to the petitioner cannot be recovered, in view of the law laid down by the Hon'ble Apex Court in the above judgment.

9. In view of the above, the Writ Petition is allowed directing the 5th respondent Society not to recover any salary drawn by the petitioner for the services rendered by her after attaining the age of 58 years till attaining the age of superannuation, i.e., 30.06.2017. There shall be no order as to costs.

Consequently, pending miscellaneous applications, if any, shall stand closed.

SMT JUSTICE V.SUJATHA

Dated: 29.04.2026
KGR