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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.336 OF 2022

Mrs. Micaela Gracy De Oliveira,
 Age 50 years,
 W/o Marcus Fernandes,
 R/o H No. 58/A, Kevnen,
 Caranzalem, Taleigao, Goa. Petitioner.

Versus

1. The Corporation of City of Panaji,
 Through its Commissioner,
 Municipal Building,
 Panaji, Goa.

2. The Senior Audit Officer,
 Indian Audit & Accounts Department,
 Office of the Accountant General, Goa,
 “Audit Bhawan”, Alto Porvorim,
 Goa, 403521. Respondents

Mr Abhijeet Kamat with Mr Simoes Kher, Advocates for the Petitioner.

Mr Somnath Karpe, Advocate for Respondent No.1.

Mr Sarvadnya D. Patil, Advocate for Respondent No.2.

CORAM:

**M.S. KARNIK &
 VALMIKI MENEZES, JJ.**

RESERVED ON:

21st June 2024

PRONOUNCED ON:

8th July 2024

JUDGMENT (*Per Valmiki Menezes, J.*):

1. Heard Mr Abhijeet Kamat for the Petitioner, Mr Somnath Karpe for Respondent No.1 and Mr Sarvadnya D. Patil for Respondent No.2. Rule was issued in this matter on 25.04.2022, when interim relief granted by order dated 13.04.2022 was confirmed and the matter was placed for final disposal, with the consent of the learned Counsel for the parties.
2. This petition under Article 226 of the Constitution of India seeks issuance of a writ of certiorari to quash and set aside a memorandum dated 14.07.2021 bearing No.218/01/2018/2019/CCP/Accts/2021-22/251 issued by the Respondent No.1, the Corporation of the City of Panaji (CCP). By the impugned memorandum, the CCP sought to recover an amount of Rs.48,000/- paid to the Petitioner as a Children's Educational Allowance (CEA), on the premise that under an audit report prepared by the Indian Audit and Accounts Department (Respondent No.2) dated 02.02.2021, there was irregular release of the CEA to the Petitioner.
3. It is the case of the Petitioner that she is employed as an Upper Division Clerk with the Respondent No.1, CCP; that she has a son who is a special child suffering from Cerebral Palsy/Spastic/Quadriplegia, which is classified as a permanent disability, as substantiated by medical certificate dated 13.04.2006 issued by the Goa Medical College, after assessing the child's disability. It is further

the Petitioner's case that under the "Children's Education Allowance" scheme of the Respondent CCP, reimbursement is granted to its employees of a percentage of the fees paid for the education of their children. The CEA scheme as provided by the Central Government to its employees under the CCS (Educational Assistance) Orders, 2006 has been admittedly adopted by Respondent No.1.

The Petitioner avers that she secured admission for her son to the course of Bachelor of Business Administration (T & T) in the Don Bosco Society for Higher Education College for the academic year 2017 and paid tuition fees of Rs.67,132/- . She then submitted a reimbursement request under the CEA scheme to the CCP with an application dated 03.10.2017 in which she made all disclosures. The CCP ultimately accepted her reimbursement request and disbursed an amount of Rs.48,000/- as reimbursement of fees on 01.11.2018. Almost three years later, she received the impugned memorandum dated 14.07.2021 directing her to refund the reimbursed amount of Rs.48,000/- claiming that the same had been wrongly paid to her as her child was not entitled to reimbursement under the scheme, primarily on the ground that the course undertaken by him was for a Bachelor's degree and the CEA scheme was applicable for courses up till Class XII i.e. Higher Secondary or Senior Secondary classes and not beyond that.

4. The two main grounds raised in the petition laying challenge to the memorandum are :

- a) That the scheme does cover classes beyond Class XII for children with disabilities, and
- b) That the Petitioner having made all disclosures in her application, the conclusions of the Audit Officer that the disbursement was irregular and on a distorted understanding of the Rules to suit the convenience of the employee, was an arbitrary exercise of his powers, undertaken without hearing the Petitioner and was liable to be quashed.

5. In reply to the petition, Respondent No.1 has filed an affidavit of its Commissioner dated 15.09.2022. In this affidavit, the Respondent No.1 submits that its Officer, on receipt of the Petitioner's application, construed Clause 1(l) of the CEA to limit the scheme in the case of normal children to XII Class but in case the child was disabled, the benefit would be admissible upto the age of 22 years; As the Petitioner's child at the time of admission was ascertained to be 20 years of age, to avoid any doubt, the CCP referred the matter for legal opinion to its empanelled lawyer who submitted a written opinion on 22.09.2018 opining that the Petitioner's child was in fact eligible to reimbursement of a part of the fees paid to the extent of Rs.48,000/-. Consequently, the CCP released the reimbursement to the Petitioner.

The affidavit further states that subsequent to the release of the amount, during the audit undertaken by the office of the Accountant General, Goa, a letter dated 20.12.2018 came to be received by the CCP from the Senior Audit Officer stating that the age limit for claiming CEA for children other than physically handicapped was 20 years or till the time of passing Standard XII whichever is earlier and is applicable to handicapped children upto the age of 22 but restricted till the XII Standard. The Senior Audit Officer raised an objection to the reimbursement of the tuition fees of the Petitioner's child on the count that he was undertaking a degree course after XII Standard and as such, the Petitioner was not entitled to reimbursement. This Respondent claimed that it received a letter dated 02.02.2021 addressed by the Respondent No.2 alleging that instead of interpreting the Rules on their own, the superiors of the CCP were purposely neglecting the Rules under the CEA scheme and redirecting files to the Legal Cell; the CCP claims that it was consequent upon the directive of the Audit Officer that it issued the impugned memorandum dated 14.07.2021 directing refund of the excess amount of Rs.48,000/- from the Petitioner.

6. During the course of hearing arguments, learned Advocate Mr Sarvadnya D. Patil for Respondent No.2 fairly accepted the position that there was no misrepresentation of any facts stated by the Petitioner on the form submitted by her under which she claimed reimbursement under the CEA scheme. He, however, submits that

reimbursement of tuition fees is admissible under Clauses 19 to 21 of the scheme only in respect of children of Government Servants admitted upto Class XII; He further submits that on a conjoint reading of Clause 20 and 21 of the scheme, the only interpretation permissible was that physically handicapped or mentally retarded children of Government Servants were permitted to complete/attend the XII Class course up till the age of 22 years, considering their disability. He submitted that even for disabled/handicapped children upto the age of 22 years, the scheme would be admissible for reimbursement of tuition fees only till the completion of XII Class and not for further studies as in the present case, where the child concerned was claiming reimbursement of fees for the first year of a degree course of Bachelor in Business Administration (BBA).

7. We have perused the provisions of the CEA scheme and the CCS (Educational Assistance) Orders, 2006 under which the Petitioner claimed refund. The interpretation given to the provisions of the scheme by the Respondent No.2 may not appear to be otherwise incorrect. However, the application was submitted way back on 03.10.2017, neither of the Respondents alleging that there was any misrepresentation or wrong information as to the course being attended by the Petitioner's child or that his age, at the relevant time, was 20 years. The application was processed, and in view of the doubt arising in the mind of the Officer of the CCP dealing with the case, the claim was referred for legal opinion which was ultimately

obtained on 22.09.2018 more than a year after its submission. The legal opinion advised that the reimbursement of tuition fees was admissible for handicapped children upto the age of 22 years without providing any restrictions of Class (upto XII Class), the restrictions applying only to a normal child.

8. The amount towards reimbursement was ultimately disbursed on 01.11.2018. There was no objection raised by the Respondents for nearly two years and eight months, when the Petitioner received the impugned memorandum on 14.07.2021. The impugned memorandum is based upon an opinion of an Auditor, pursuant to an audit conducted by the Respondent No.2 two years after the disbursement.

In our opinion, even if we consider the objection raised by the Auditor based on the interpretation of the scheme and the CCS (Educational Assistance) Orders, 2006, which may not be otherwise a wrong opinion, we cannot be unmindful of the gross delay of almost three years in seeking recovery of the amount of Rs.48,000/- from the Petitioner merely on the basis of a difference of opinion. This is not a case where the audit alleges that the Petitioner has received the reimbursement based upon a misrepresentation of facts or by committing fraud. The amount was disbursed on the basis of a legal opinion.

9. In *Thomas Daniel Vs. State of Kerala and Others reported in 2022 SCC OnLine SC 536*, the Hon'ble Supreme Court, making reference to a catena of previous decisions rendered by it and holds that it has been its consistent view that if an amount was not paid to an employee on account of any misrepresentation or fraud, or such payment was made by an employer by applying a wrong principle for calculating the pay/allowance or, on the basis of a particular interpretation of Rule/Order which was subsequently found to be erroneous, such payment ought not to be recoverable.

Applying this settled principle to the facts of the present case, we are of the considered opinion that even accepting the position that the interpretation rendered by the Respondent No.2 to the provisions of the CCS (Educational Assistance) Orders, 2006 and the CEA scheme were correct, the Petitioner not having derived benefit of the reimbursement based upon any act of misrepresentation or fraud, the issuance of the impugned memorandum would be arbitrary and requires to be quashed. We express this opinion after giving due weightage to the fact that the amount is sought to be recovered from the Petitioner, who is employed as an Upper Division Clerk, as a Class III employee, and has a mentally challenged child on whose behalf the reimbursement was claimed. The amount of refund claimed of Rs.48,000/- may seem like a minuscule quantum to the Respondents, but considering the Petitioner's background, such a sum would surely be a substantial one.

10. For the reasons stated above, we quash and set aside the impugned memorandum dated 14.07.2021 issued by Respondent No.1 and make Rule absolute in terms of prayer (a) of this petition. No costs.

VALMIKI SA MENEZES, J.

M.S. KARNIK, J.