IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WP(C).No. 26419 of 2008 (T)

PETITIONER(S):

M.V.KARUNAKARAN, SUB DIVISIONAL OFFICER
(RETIRED), MUNDOMVAYAL, KOOVERI
CHEPARAPADAVU, KANNUR DISTRICT - 670 581.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENT(S):

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1. STATE OF MAHARASHTRA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT
MAHARASHTRA, MUMBAI.

2. THE ACCOUNTANT GENERAL,
OFFICE OF THE ACCOUNTANT GENERAL - II
(ACCOUNTS & ENTITLEMENTS), NAGPUR
MAHARASHTRA - 440001.

3. THE EXECUTIVE ENGINEER,
UPPER PENGANGA PROJECT, DN.NO.4, AKHADA
BALAPUR.

4. DISTRICT TREASURY OFFICER,
OFFICE OF THE DISTRICT TREASURY OFFICER, NANDEDSW
VAZIRABAD - 431 601.

5. THE ACCOUNTANT GENERAL,
OFFICE OF THE ACCOUNTANT GENERAL
(ACCOUNTS & ENTITLEMENTS), M.G.ROAD
THIRUVANANTHAPURAM, KERALA.

6. SUB TREASURY OFFICER,
THALIPARAMBA, KANNUR.

R, BY ADV. GOVERNMENT PLEADER SRI. T.R RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 26419 of 2008 (T)

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1	COPY OF THE LAST PAY CERTIFICATE OF THE PENSION PAYMENT OF THE PETITIONER DTD. 3.6.06
EXT.P1(A)	A TRUE ENGLISH TRANSLATION OF EXT.P1
EXT.P2A	COPY OF THE ORDER OF THE 5TH RESPONDENT TO THE 6TH RESPONDENT FOR PENSION PAYMENT
EXT.P3	COPYOF THE COMMUNICATION FROM THE 2ND RESPONDENT DTD. 24.7.06
EXT.P4	COPY OF THE LETTER DTD. 17.8.06 SUBMITTED BY THE PETITIONER TO THE 2ND AND 3RD RESPONDENT.
EXT.P5	COPY OF THE LETTER DTD. 4.10.06 FROM THE OFFICE OF THE 2ND RESPONDENT TO THE 3RD RESPONDENT.
EXT.P6	COPY OF THE LETTER DTD. 27.9.07 FROM THE OFFICE OF THE 2ND RESPONDENT.
EXT.P7	COPY OF THE LETTER DTD. 26.10.07 FROM THE OFFICE OF THE 3RD RESPONDENT.
EXT.P7A	A TRUE ENGLISH TRANSLATION OF EXT.P7
EXT.P8A	COPY OF THE ORDER NO. FUND-19/FP-102/04-05 DTD. NOVEMBER 07
EXT.P9A	COPY OF THE ORDER NO. P19/LC/10/118 DTD. 30.4.08 OF THE 5TH RESPONDENT.

RESPONDENTS EXHBITS:

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.26419 of 2008 - T

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Dated this the 03rd day of December, 2015

J U D G M E N T

The petitioner having retired from the employment with the State of Maharashtra and settled in Kerala was aggrieved with Ext.P9 order dated 30.04.2008, seeking recovery of an amount of Rs.1.61,493/-. The petitioner admittedly retired on 30.09.2003 and the petitioner was sanctioned the pension and disbursed the same as is indicated by Exts.P1 and P2.

2. Subsequently, the Accountant General(A&E) II, State of Maharashtra, is said to have directed the Executive Engineer, Upper Penganga Project Division No.4, Akhada Balapur, Hingoli to recover an amount of Rs.1,33,679/- along with penal interest of Rs.27,814 from the petitioner. The reason stated was that the opening balance of the petitioner's provident fund account, in the year 1988-1999, was erroneously taken as

Rs.25,675/- instead of Rs.5,675/-. This was carried over in the subsequent years and the petitioner, on retirement was paid the said excess amount along with the interest for the balance years ie., for about 14 years.

3. The petitioner by Ext.P4, requested the Executive Engineer for details of his provident fund account. There was no reply but the Deputy Accountant General again issued Ext.P5, finding that the petitioner had deliberately kept quiet in order to derive financial benefit out of the inflated balance and it is a display of dishonesty. The petitioner subsequently was threatened with the recovery as per Ext.P9, dated 30.04.2008 issued from the office of the 5th respondent, who was disbursing pension to the petitioner.

4. At the time of admission, the question of maintainability was left open and notice was issued to the parties. There is a counter affidavit placed on record by the respondents, but without any contention with respect to the

question of maintainability or the jurisdiction of this Court under Article 226 of the Constitution of India, over the Accountant General of the State of Maharashtra. Considering the fact that the matter was pending before this Court for all these years and that the respondent has acquiesced to the jurisdiction of this Court by filing an affidavit in opposition to the claim of the petitioner, this Court, is of the opinion that the matter could be considered on merits; on the facts disclosed from the records.

5. The counter affidavit also does not indicate any rule, by which such recovery could be made almost five years after the retirement of an employee. The counter affidavit also speaks of the petitioner having not behaved with absolute integrity and dereliction in the discharge of his duties. This Court is unable to find any such misconduct on the part of the petitioner. It cannot also be said that the petitioner was in any manner responsible for the inflated figures in the provident fund account which is maintained by the respondents. In any event

the allegations are in the nature of a misconduct, which has to be properly proceeded with, to find the petitioner guilty; which proceeding is not possible after retirement.

6. Even going by the various communications of the respondent authority, it is very clear that the inflated figure was due to an erroneous computation by the authorities in the year 1988-89. The mistake was not detected any time during his service till 2003. The authorities also retired the petitioner and paid him the entire retirement dues and has now proceeded to recover the money after 13 years. The petitioner not being in any manner responsible for such over payment, the decision of the Hon'ble Supreme Court in **State of Punjab** v. **Rafiq Masih (White Washer) [2015 (1) KLT 429 (SC)]** would squarely apply. No recovery can be made from the retired employee, especially since no fault can be found on his conduct and excess payment was only due to the erroneous computation made by the authorities.

The writ petition would stand allowed. Exts.P3, P5 and P9 would stand set aside. There would be no order on costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/04/12/2015

// true copy //

P.A to Judge.