IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.15593 of 2016

P.Mohan ... Petitioner

Vs.

1.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 1.

2.The Financial Advisor & Chief
Administrative Officer,
Chennai Port Trust,
Rajaji Salai,
Chennai - 1.

3.Senior Administrative Officer (Pensions),
Administrative Office,
Chennai Port Trust,
Rajaji Salai,
Chennai - 1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the proceedings No.AO (Pension)/PRO No.14388/2015/F, dated 01.03.2016 of the third respondent the Sr.A.O.(Pension) issued with the approval of the second respondent and quash the same and direct the respondents to pay the arrears illegally recovered from the pension to the petitioner herein with interest.

For petitioner : Mr.Vasudevan
For Respondents : Mr.M.Palanimuthu

ORDER

By way of filing this writ petition, the petitioner seeks to quash the impugned order passed by the third respondent vide his proceedings dated 01.03.2016 in rejecting the request of the petitioner to stop the recovery being made from his pension, that too without notice or hearing. He further sought a direction to the respondents to pay the arrears illegally recovered from his pension with interest.

2. According to the petitioner, while he was working as Senior Attender in Chennai Port Trust, he has opted for Special Voluntary Retirement Scheme and accordingly, he was also relied on 30.11.2012 under the said Scheme. Thereafter, he was also paid with all the service benefits including his past services rendered in CISF. Though he has been paid with pension regularly till 2014, all of a sudden from December'2014, the respondent department deducted Rs.2,500/- from his monthly pension.

3. In such circumstances, it is the contention of the learned counsel for the petitioner that the rules of natural justice must be followed before passing the recovery order and therefore, the party to be affected must be given a reasonable opportunity of showing cause against the proposed recovery. Had the petitioner provided with a reasonable opportunity of being heard before the recovery order, he ought to have explained his claim in a proper manner and that the recovery could have been avoided. Since that has not been done, the deduction so made by the respondent, without following the principles of natural justice, is not legally sustainable.

4. On instruction, learned counsel appearing for the respondents submitted that the Ex-gratia was paid with other pensionary benefits for the total service rendered by him in CISF and Chennai Port Trust. It is further submitted that at the time of wage revision, arrears of pensionary benefits including the payment of ex-gratia was reviewed and that the approval was obtained for calculation of Ex-gratia for the services rendered in Chennai Port Trust alone, therefore, the third respondent passed the recovered order to recover the excess amount of Rs.3,47,058/- from his monthly income. Hence, on this score, he pleaded, no interference is called for.

5. Heard both sides.

6. Given the facts and circumstances of the case, it is relevant to refer to the judgment of this Court in K.Kumaran v. Central Pension Account Office, New Delhi (2014 WLR 171), wherein this Court, by referring to the various judgments of the Hon'ble Apex Court, held thus:

> "15. In the light of various decisions rendered by the Hon'ble Apex Court and this Court, it has been made crystal clear that when there is no misrepresentation or fraud committed by the employee, excess payment paid cannot be recovered from the retired employee, while disbursing his pension amount subsequently. It is an undisputed fact that a retired employee would

normally spend his pension amount then and there. The employer would be careful in correctly disbursing the pension amount. If there is any excess payment made, that would also be spent by the retired employee, for which, he could not be made responsible. When there is no misrepresentation or fraud on the part of the retired employee, the excess amount cannot be recovered from him. Further, without providing reasonable opportunity, deducting any amount in the pension, on the ground of excess payment made is against law, as held by the Hon'ble Apex Court.

16. In the instant case, pension amount has been deducted, even without providing reasonable opportunity to the petitioner, hence, it is exfacie against law and not legally sustainable. On the similar circumstances, the Hon'ble Supreme Court has categorically ruled that such excess amount recovered should also be refunded to the retired employee, since such recovery has been made against law. Therefore, this Court is of the view, to meet the ends of justice, to allow the writ petition as prayed for.

7. It is an admitted fact that the respondent department has been deducting Rs.2500/- from the monthly pension of the petitioner, that too without notice. Hence, in the light of the above said judgment, I am of the view that the impugned action of the respondent supporting the recovery being made from the monthly pension of the petitioner is against the principles of natural justice and violative of Articles 14 and 16 of the Constitution of India. Thus, on this score alone, the impugned order is set aside. The respondents are directed to issue fresh notice to the petitioner and thereafter to pass a speaking order on receipt of the explanation from him.

6. In fine, the writ petition stands allowed as indicated above. No Costs. WMP.No.13562 of 2016 is closed.

rkm

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai – 1.

2.The Financial Advisor & Chief
Administrative Officer,
Chennai Port Trust,
Rajaji Salai,
Chennai – 1.

3.Senior Administrative Officer (Pensions),
Administrative Office,
Chennai Port Trust,
Rajaji Salai,
Chennai – 1.

+ 1 cc to Mr.M.Palanimuthu, Advocate SR 32000

+ 1 cc to M/s.Vasudevan, Advocate SR 31906

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