IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.2647 of 2014

D.Susairaj .. Petitioner

Vs.

1.The District Treasury Officer,
Perambalur.
2.The Accountant General of Tamil Nadu,
Teynampet,
Mount Road,
Chennai-06. .. Respondents

The writ petition has been filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to repay the recovered amount of Rs.1,19,735/- with interest, at the rate of 12% per annum and to pay the cost of the writ petition.

For Petitioner : Mr.S.M.Subramaniam
For Respondents : Mr.O.Selvam, GA for R-1
Mr.V.Murali for R-2

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ORDER

Heard.

2 This writ petition has been filed, praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents to repay to the petitioner an amount of Rs.1,19,735/-, recovered from his pensionary benefits, along with the interest, at the rate of 12% per annum.

3 The petitioner has stated that he was working, as a P.G. Assistant (English), in C.S.I. Boys Higher Secondary School, Erode. He had retired from service, on 30.8.2006, on attaining the age of superannuation. It has also been stated that the pension proposals, made on behalf of the petitioner, had also been sanctioned, based on which the petitioner has been drawing his pension, as per his last drawn pay. While so, the first respondent had started recovering an amount of Rs.5000/-,

from the monthly pension being paid to the petitioner, from the month of October, 2011. It has also been stated that no notice had been issued to the petitioner before the recovery had been made. Even though the petitioner had sent several representations, raising his objections, the first respondent had continued to recover the said amount, on a monthly basis. Hence, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

4 The learned counsel appearing on behalf of the petitioner had submitted that the first respondent does not have any power or authority to recover Rs.5000/-, on a monthly basis, from the pension being paid to the petitioner, based on the audit objection. He had relied on a decision of the Supreme Court, made in State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334. Paragraph 18 of the said judgment reads as follows :

> "18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermisssible in law:
>
> (i)Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
>
> (ii)Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
>
> (iii)Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
>
> (iv)Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
>
> (v)In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or

arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

5 The learned counsel had submitted that the Supreme Court had made it clear, in the said decision, that the recovery of the amount paid to an employee, who had retired from service, is not permissible. Since an amount of Rs.1,19,735/- had already been recovered from the pensionary benefits of the petitioner, in spite of his objections, the said amount has to be repaid to the petitioner, along with interest, at the rate of 12% per annum.

6 A counter affidavit, dated 17.8.2016, had been filed on behalf of the first respondent. Paragraphs 3,4 and 5 of the said counter affidavit read as follows :

"3.It is submitted that as per the Accountant General's Intimation Slip No.P25/5/S161-904/RTD/2007-2008/8347, dated 02.11.2007 pension for Rs.7595/- per month has been sanctioned with effect from 01.09.2006 and continuously drawn his pension in District Treasury, Perambalur from January 2008. After implementing VI Pay Commission (Revised Scale of Pay Rules 2006) vide G.O.234/Finance (PC) Dept. dated 01.06.2009 his pay has been revised and his pension also revised with effect from 01.09.2006 raising his pension from Rs.7595/- to Rs.11887/- vide Accountant General's Authorisation P30/APP LIC No.12502347/PCR.2010-11, dated 14.01.2011. Based on the Accountant General authorisation his pension has been revised with effect from 01.09.2006 and pension arrear has been arrived. While arriving the pension arrear the DA% has been wrongly calculated and the Interim Relief already paid was not deducted in pension arrear amount and the arrear amount paid on 28.02.2011 to the individual.

4.It is submitted that during 08/2011 the Audit team of Regional Joint Director of Treasuries and Accounts, Trichy were inspected the Pension Records of the District Treasury, Perambalur and find out the excess pension paid to the individual and instructed to recover the excess amount paid to him. After raising Audit Objection by the Regional Joint Director of Treasuries and Accounts, Trichy the pension arrear paid to D.Susairaj once again verified by the pension section and the another mistake of wrong calculation came to light and find out that a sum of Rs.119735/- was paid as excess.

This has been intimated to the individual and after getting concurrence letter from the individual the excess amount of Rs.119735/- was recovered by simple monthly installment from his monthly pension. The excess amount paid on 28.02.2011, mistake find out during 08/2011 and recovery started from 10/2011, hence there is no delay. The recovery made within the frame of Govt. rules and in simple monthly installment and with the concurrence of the pensioner. There was no violation of rules.

5.It is submitted that the excess paid pension amount of Rs.5000/- recovered, as monthly installment from October 2011 to 06/2013. The excess payment was intimated to the pensioner and the recovery was imposed with his concurrence and the individual has given concurrence letter on 28.12.2011 and accept to recover a sum of Rs.5000/- per month from October 2011. It is not correct. The individual was retired from service on 31.08.2006 and paid Rs.7595/- as pension with effect from 01.09.2006. Further after implementing the revised pay rules 2006 the pay of the individual has been revised vide G.O.Ms.No.234 Finance (PC) Dept. 01.06.2009 and subsequently the pension of the individual also revised by Accountant General, Chennai vide Letter No.P30/APPLIC No.12502347/PCR/2010-11, dated 14.01.2011 from Rs.7595/- to Rs.11887/-. After receipt of the above Accountant General authorisation, the pension has been revised by the District Treasury, Perambalur and pension arrear arrived as Rs.209766/- instead of Rs.90031/- by mistake, taking the new DA Ratio as drawn (ie) 6% instead of 35% (Amounting Rs.84644/-) and already paid interim relief amount of Rs.35091/- not deducted in the pension arrear. (Rs.84644 + 35091 = Rs.119735/-) The above excess amount paid on 28.02.2011. This mistake was pointed out in the Regional Joint Director of Treasuries and Accounts, Trichy's Audit report 2011 and recovery orders issued. In brief the excess amount of Rs.119735/- paid on 28.02.2011 and find out during November 2011 and individual given his concurrence on 28.12.2011 and recovery effected, hence there is no delay in this matter. Hence the question of unilaterally does not arise."

7 In the counter affidavit, dated 17.8.2016, filed on behalf of the second respondent, it has been stated that the second respondent had not raised any audit objection, regarding the payment of pension to the petitioner, nor has he issued any recovery proceedings, with regard to the pensionary benefits being paid to the petitioner.

8 The learned counsel appearing on behalf of the first respondent had submitted that an amount of Rs.1,19,735/- had been recovered from the pensionary benefits of the petitioner, as an excess payment had been made to him, due to certain miscalculations. The recovery of the amount was based on the audit objection. He had further submitted that the petitioner had given his concurrence for the recovery of the amount, on 28.12.2011. Therefore, the writ petition filed by the petitioner is liable to be dismissed, as it is devoid of merits.

9 In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well the respondents and on a perusal of the records available, it is noted that the petitioner had retired from the post of the P.G. Assistant, on 30.08.2006, on attaining the age of superannuation. The pensionary benefits had also been calculated and paid to him, based on his last drawn salary. However, the first respondent had started recovering a sum of Rs.5000/-, per month, from the pensionary benefits being paid to the petitioner. It is also noted that a sum of Rs.1,19,735/- had been recovered from the pensionary benefits of the petitioner, stating that such amount had been wrongly paid to the petitioner, due to an error in calculation. However, no notice had been issued to the petitioner before the recovery of the said amount.

10 Even though it has been claimed, by the first respondent, that the petitioner had given his consent for the recovery, the said consent cannot be taken into serious consideration, as the petitioner had raised objections against the recovery, in his representations made to the authority concerned. It is also clear from the decision of the Supreme Court, made in State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334 that no recovery can be made from a retired employee.

11 In such circumstances, this Court finds it appropriate to direct the first respondent to refund the amount of Rs.1,19,735/- to the petitioner, within a period of three months from the date of receipt of a copy of this order. However, the claim of the petitioner for the payment of the interest on the

said amount, at the rate of 12% per annum, is rejected. Accordingly, this writ petition stands partly allowed, with the above directions. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The District Treasury Officer,
Perambalur.

2.The Accountant General of Tamil Nadu,
Teynampet,
Mount Road,
Chennai-06.

+1 cc to Mr.S.M.Subramaniam Advocate sr 47398
+1 cc to Mr.V.Murali Advocate sr 47302

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