

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.20090 of 2016
and WMP No.17313 of 2016

Mr.P.G.Krishnan

.. Petitioner

Vs.

1. The State of Tamilnadu
Rep. by the Secretary to Government,
Pension Department,
Fort St. George, Chennai - 9.
 2. The Director,
Special Auditing,
Panagal Building,
Chennai - 15.
 3. The Sub Treasury Officer,
Vaniyambadi,
Vellore District.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus, calling for the records pertaining to order bearing No.Na.Ka.No.189/2016 dated 25.4.2016 of the 3rd respondent and quash the same and consequently direct the respondents to refund the amount so recovered.

For Petitioner : Mr.T.R.Raj Gajenthran

For Respondents: Mr.M.Dig Vijay Pandian
Additional Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner, challenging the order of the third respondent in his proceeding in Na.Ka.No.189/2016 dated 25.04.2016 and to quash the same. He further sought for a direction to the respondents to refund the amount so recovered.

2.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents.

3.The impugned order is challenged by the petitioner mainly on the ground that without notice, it has been passed by the third respondent. It is stated that the petitioner retired on 30.11.1995. After 21 years of his retirement, the third respondent passed the impugned order for recovery of an

exorbitant amount of Rs.59,578/- from his pension on the alleged ground of excess payment made to the petitioner on the basis of an audit objection. According to the petitioner, no recovery could be made on audit objection without notice, even if excess payment is made. When there is no fault on the petitioner in regard to receipt of excess made, especially, when there is no misrepresentation on his part, as per the decision of the Hon'ble Supreme Court in Sahib Ram V. State of Haryana and others reported in 1995 Supp (1) Supreme Court Cases 18, the recovery cannot be resorted to.

4. On a cursory perusal of the impugned order, it is seen that the third respondent had passed the impugned order dated 25.04.2016 without even notice, that too after 21 years of retirement of the petitioner. At this juncture, it is worthwhile to recollect the decision of the Hon'ble Supreme Court in State of Punjab and others V. Rafiq Masih (White washer) and others reported in 2015 (4) Supreme Court Cases 334, wherein, it was held that no recovery could be made by the employer for having made excess payment without any fault of employee.

5. In the light of the decision of the Hon'ble Supreme Court as stated supra, recovery could not be made by the respondents in regard to the amount paid by them in excess to the petitioner without any fault on him. Therefore, the Writ Petition is allowed and the impugned order passed by the third respondent dated 25.04.2016 is set aside. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary to Government,
State of Tamilnadu, Pension Department,
Fort St. George, Chennai - 9.
2. The Director, Special Auditing,
Panagal Building, Chennai - 15.
3. The Sub Treasury Officer, Vaniyambadi,
Vellore District.

+1cc to Mr.T.R. Raja Gajenthiran, Advocate, S.R.No.36177

+1cc to the Government Pleader, S.R.No.35937

AD (CO)

EU (26/07/2016)

WP No.20090 of 2016
and

WMP.No.17313 of 2016