IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.11.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 27782 OF 2013
AND
M.P. NO. 1 OF 20013

R.Jalanathan .. Petitioner

- Vs -

1. The Principal Secretary to Govt.
   Home (Courts - I) Department
   Secretariat, Chennai 600 009.

2. The Principal Accountant General
   (Civil Audit)
   Tamil Nadu & Puducherry
   361, Anna Salai
   Teynampet, Chennai 600 018.

3. The Treasury Officer
   Tiruvallur. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the proceedings of the 2nd respondent in No.Pr.AG(CA)/CASSI/VIII/2011-2012/AM No.521/588 dated 14.10.11 and quash the same.

For Petitioner : Mr. S.Vijayakumar

For Respondents: Mr. S.Pattabhiraman, GA for RR-1 & 3
Mr. S.Vijayashankar for R-2

ORDER

(DELIVERED BY HULUVADI G.RAMESH, J.)

The case of the petitioner, as the records reveal, is that the petitioner joined the Judicial Service as Judicial Magistrate during the month of August, 1992 and initially posted at Madurai. After putting in about 18 years of service in various capacities in the Judiciary, the petitioner retired as Principal Subordinate Judge, Tiruvallur on the afternoon of 30.6.2010.

2. On the retirement of the petitioner, pension papers were forwarded along with the salary details and the authorisation letter of the petitioner to the Pay and Accounts Office, Chennai and, consequently, retirement benefits were settled vide proceedings of the 2nd respondent dated 27.1.11, after the same was authorised for payment by the Office of the Accountant General. Whileso, the impugned proceedings was issued by the 2nd respondent to pay a sum of Rs.2,44,466/=, being the amount payable on account of the difference in HRA/CCA drawn by the petitioner for the period from 1.1.06 to 30.6.10, which has been drawn in excess. Reference was drawn to the clarification issued by the Government vide letter No.88196/Cts-1/2010-2 dated 11.2.11, wherein permission was accorded to Judicial Officers to draw revised rate of HRA and CCA like that of the State Government employees from 1.7.10.

3. It is further averred by the petitioner, that on the basis of Justice E.Padmanabhan Commission report relating to uniform pay scales to all the Judicial Officers throughout the country, the Supreme Court, while accepting the recommendations of the Justice E.Padmanabhan Commission, had directed all the State Governments to implement uniform pay scales to all the Judicial Officers with effect from 1.1.06.

4. Based on the said orders of the Supreme Court, the State Government issued G.O. Ms. No.647 dated 19.7.10 revising the scales of pay of the posts as on 1.1.06. Similarly, G.O. Ms. No.648 dated 19.7.10 was issued revising the pay scales of the retired judicial officers with effect from 1.1.06.

5. The petitioner retired from service on 30.6.10 and by virtue of the above referred to Government Orders, became eligible for drawal of scale of pay and allowances with effect from 1.1.06. Based upon the letter dated 9.12.10 issued by the Pay and Accounts Office of the High Court in terms with the revised pay scale and allowance allowed by the Government through the aforesaid Government Orders, the 2nd respondent issued orders permitting the petitioner to draw the revised pay scale and allowances in terms with the letter of the Pay and Accounts Office dated 9.12.10, which was disbursed by the 3rd respondent on 11.5.2011.

6. It is further averred that to his shock and surprise, the petitioner received the impugned proceedings on 1.11.11, i.e., after a period of 15 months from the date of his retirement calling upon him to pay a sum of Rs.2,44,466/=, said to be the alleged excess amount drawn towards HRA and CCA for the period 1.1.06 to 1.7.10. To the said notice, the petitioner sent his reply on 30.1.13 repudiating the claim made by the 2nd respondent stating that no such excess amount, as alleged, had been drawn by him. Further, apprehending deduction of the said amount claimed, the present writ petition has been filed to quash the

impugned proceedings.

7. A counter affidavit has been filed by the 2nd respondent, which has been adopted in toto by the 1st respondent. In the said counter, which is attested by the Deputy Accountant General, it is averred that the Government, vide G.O. No.864 dated 5.10.2010, ordered revision of various allowances for the employees of the State/Central Government at the applicable rates pursuant to the order of the Supreme Court directing to implement the recommendations of the Justice E.Padmanabhan Commission with effect from 1.1.06 uniformly to all the Judicial Officers throughout the country. In the said Government Order, while Dearness Allowance was made admissible at the rates paid to the State/Central Government employees with effect from 1.1.06, with regard to CCA and HRA, it was stated that it shall be on the basis of the rates admissible to State Government employees. Accordingly, Government issued letter dated 11.2.2011 clarifying that revision in HRA and CCA to the Judicial Officers would be from 1.7.10. Though communication was addressed by the Office of the Principal Accountant General to all the Commissioner of Treasuries and Accounts with a request to instruct all the Pay and Accounts Officers and Treasury Officers to deduct excess HRA and CCA paid for the period 1.1.06 to 30.6.10, however, in respect of the petitioner, arrears bill was drawn on 11.5.2011 and passed by the Treasury Officer, Tiruvallur on 24.5.2011 without effecting the deduction of excess HRA and CCA as mandated by the Government Order.

8. During the auditing process pertaining to the period 1.1.06 to 30.6.10, excess allowance drawn towards HRA, CCA and transit pay in addition to non-deduction of Income Tax in respect of sumptuary allowance, surrender leave salary, etc., was noticed and, therefore, letter dated 5.9.2011 was addressed to the petitioner with a copy to the Treasury Officer, Tiruvallur, calling upon the petitioner to remit the excess amount drawn on the above heads. The petitioner had also furnished an undertaking that any amount drawn in excess in the arrears bill would be refunded by him, if the same had been paid incorrectly to him. It is further averred by the 2nd respondent that the Commissioner of Treasuries & Accounts was requested to instruct all the Treasury Officers to recover excess HRA and CCA paid to the Judicial Officers from 1.1.06 to 30.6.2010 vide letter dated 23.2.2011. However, only vide proceedings dated 11.5.2011, authorisation was given to the petitioner to draw arrears of HRA and CCA, which is subsequent to the clarification issued by the Government. Therefore, it is averred that without following the Government Order, the Treasury Officer, Tiruvallur, had passed the bill for payment, which is bad and, therefore, the impugned proceedings calling upon the petitioner to remit the excess amount is perfectly in order and does not warrant any interference.

9. It is averred by the 3rd respondent, that the petitioner, being a self-drawing officer, pay and allowances are fixed by the Principal Accountant General, Chennai and disbursement is made by the Treasury Office. Accordingly, in the present case also, the petitioner produced his salary details along with authorisation and the letter of the 2nd respondent and on the basis of the said documents, disbursement was made by the Treasury on the basis of the authorisation issued by the Accountant General. It is the stand of the 3rd respondent that amount has been disbursed to the petitioner only based on the authorisation issued by the Accountant General.

10. Learned counsel for the petitioner contended that the petitioner had been paid the amounts after due verification and authorisation by the office of the 2nd respondent, which has been duly disbursed by the 3rd respondent. Any amount, paid in excess, without the knowledge of the petitioner, by the respondents, cannot be recovered from him, as he is not a party to any error committed by the respondents. Reliance was placed on the decision of the Supreme Court in Shyam Babu Verma & Ors. - Vs - UOI (1994 (2) SCC 521).

11. However, the above stand of the petitioner is refuted by the learned counsel appearing for the respondents, who contend that the petitioner, being a self-drawing officer, had not placed the proper salary details and while the Government had mandated that HRA and CCA would be admissible at the revised rates only from 1.7.10, drawal of the same for the period from 1.1.06 to 30.6.10 by the petitioner cannot be sustained. Further, giving a go-by to the clarification issued by the Government with regard to payment of HRA and CCA from 1.7.10, amount, if any, paid to the petitioner is liable for deduction, as the petitioner has himself given an undertaking that any excess amount on the above heads, if incorrectly paid, would be refunded by him. In such a backdrop, it is the contention of the learned counsel for the respondents that the petitioner, being a self-drawing officer and having given an undertaking to pay any excess amounts paid to him under the above heads, cannot, at this point of time contend that the alleged excess amount cannot be recovered from him.

12. Heard the learned counsel appearing on either side and perused the materials available on record as also the decision relied on by the learned counsel for the petitioner.

13. In the case on hand, it is not in dispute that the petitioner is a self-drawing officer. Based on the particulars provided by the petitioner, the bill has been prepared by the Pay and Accounts Office of the High Court and as per the authorisation of the Principal Accountant General, the same has been submitted to the Treasury Department, which has disbursed the amount based on the said bill. It is further not in dispute that the clarification was issued by the Government way

back before the bill was prepared and submitted for disbursement, wherein claim has been made towards CCA and HRA from 1.1.06 instead of 1.7.10. The clarification was issued by the Government on 11.2.2011, while disbursement was made on 11.5.2011, which is clearly subsequent to the clarification. Such being the case, there being a clarification issued by the Government, which has not been acted upon while the bill was prepared, it is actually a clear case of excess payment made to the petitioner. Though the error has crept in at the time of preparation of bill by the Pay and Accounts Office on the authorisation of the Accountant General, it should not be lost sight of that the particulars relating to preparation of the bill was submitted by the petitioner himself, who was a self-drawing officer. The petitioner should have been vigilant enough to submit correct details, taking into consideration the clarification issued by the Government, while making claim for the allowances. Equally so, the passing authority and the authorising authority also should have been vigilant enough to keep in mind the clarification issued by the Government and work out the allowances permissible to the petitioner, which they have totally failed to do.

14. From the facts it is evident that the petitioner, a self-drawing officer, has submitted the details with regard to his claim for HRA and CCA from 1.1.06 to 30.6.10. However, the clarification issued by the Government relating to HRA and CCA at revised rates from 1.7.10, would not be within the knowledge of the individual at the relevant point of time, i.e., at the time of his retirement, as the clarification has been issued only on 11.2.11. However, the records reveal that the Government has issued orders that a separate Government Order would be passed in relation to rates of HRA and CCA. Further, mere submission of the papers by the petitioner, a self-drawing officer, alone cannot lead to the conclusion that the said act is a deliberate one, since the authorising authority as well as the passing authority have committed the same mistake and have passed the bill approving allowances at the revised rates without taking into consideration the clarification of the Government dated 11.2.11. Further, it should also not be lost sight of that the petitioner is a retired person and any clarification issued by the Government subsequent to the date of his retirement, the petitioner is not required to keep himself updated of all such Government Orders. However, it is incumbent upon the authorising authority and the bill preparing authority to keep themselves updated of all the Government Orders so that there is no loss caused to the exchequer by way of excess payments.

15. To buttress the argument that amounts paid in excess without the knowledge of the retired Government servant is not liable for deduction when there is no fault on the side of the retired individual, reliance was placed on the decision of the Supreme Court in Shyam Babu Verma's case (supra) by the learned

counsel for the petitioner. However, the said decision does not apply to the case on hand, as in the said case amount has been authorised to be paid to the individual, who is not a self-drawing officer. Therefore, grant of pay over the entitlement of the individual, without there being any hand of the individual in getting the higher pay, cannot be held against the individual so as to order recovery of the excess payment. In the case on hand, the petitioner was a self-drawing officer and, therefore, the case would stand on a different footing.

16. As is evident from the facts and the documents, the petitioner having retired from service on 30.6.2010, the benefits entitled to the petitioner were settled on 27.1.11. However, arrears bill pertaining to the allowances was drawn only on 11.5.2011, which is subsequent to the clarification issued by the Government on 11.2.2011 permitting enhanced allowances only from 1.7.2010. That being the position, the authorising authority as well as the passing authority should have been careful enough in working out the arrears based on the clarification issued by the Government, which they have failed to do. In such circumstances, putting the blame on the petitioner and asking him to remit the sum of Rupees Rs.2,44,466/=, on the basis of the impugned notice, without affording an opportunity of hearing, would be in stark violation of the principles of natural justice.

17. In the above circumstances, this Court is of the considered view that though the respondents may be technically right in calling upon the petitioner to remit the excess amount paid to him, however, without affording an opportunity of personal hearing, mere passing of the order directing remittance of the amount drawn in excess, would be against the principles of natural justice. This Court feels that it would be prudent for the respondents to reconsider the entire aspect of the matter on the facts noticed above and after affording an opportunity of hearing to the petitioner and pass appropriate orders in accordance with law.

18. Accordingly, the writ petition is allowed quashing the impugned notice No.Pr.AG[CA]/CASSI/VIII/2011-2012/AM No.521/588 dated 14.10.2011 issued by the 2nd respondent and the matter is remitted back to the 2nd respondent, who, if so advised, shall issue fresh notice and after affording an opportunity of personal hearing to the petitioner, decide the matter on merits and in accordance with law. The petitioner is at liberty to urge all the contentions before the appropriate authority at the time of hearing.

19. In the result, this writ petition is allowed with the aforesaid observation and direction. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

GLN

To

1. The Principal Secretary to Govt.
   Home (Courts - I) Department
   Secretariat
   Chennai 600 009.

2. The Principal Accountant General
   (Civil Audit)
   Tamil Nadu & Puducherry
   361, Anna Salai
   Teynampet, Chennai 600 018.

3. The Treasury Officer
   Tiruvallur.

+1cc to M/S S.Vijayakumar, Advocate Sr.63547
+1cc to M/S V.Vijay Shankar, Advocate Sr.63724
+1cc to Government Pleader Sr.64132

W.P. NO. 27782 OF 2013

KSJ(CO)
RVR 03/01/2017