

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4538 of 2014

and

WMP.Nos.1 of 2014 & 8262 of 2016

T.M.Paramasivam

... Petitioner

Vs

1.The Regional Joint Director of
Treasuries and Account,
Vellore District.

2.The Sub Treasury Officer,
Sub Treasury,
Pochampalli,
Krishnagiri District.

3.The Accountant General (A & E),
Tamil Nadu,
Chennai - 600 018.

4.The Additional Assistant Elementary
Educational Officer,
Kaveripattinam,
Krishnagiri District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to his Pro.Na.Ka.No./03/2014/A1 dated 03.01.2014, to quash the same and to issue consequential directions to the respondents 1 and 2 to refund the sum recovered from the petitioner from December 2013 onwards and to continue to pay the pension as it existed prior to December 2013.

For Petitioner : Mr.V.Thirupathi

For Respondents : Mr.K.Thangapandi
Government Advocate

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O R D E R

The order of recovery dated 03.01.2014 is sought to be quashed in the writ petition and issued further direction to

the respondents 1 and 2 to refund the sum already recovered from the petitioner from December 2013 onwards.

2.The writ petitioner was appointed as Head Teacher (S.G. Headmaster) in the District Board Elementary School, Veeramalai on 14.07.1960 and thereafter voluntarily retired from service on 30.11.1987. Based on the Audit objection that an excess payment was made to the writ petitioner, the respondent issued an order of recovery in proceedings dated 03.01.2014 and accordingly, the excess amount was sought to be recovered from December 2013 onwards.

3.On a perusal of the order impugned, it is clear that the fixation was erroneously done and consequently, excess payment was made to the writ petitioner. No doubt that the refixation of pay and pension was done by the officials of the respondents and it was not made on the misrepresentation or otherwise on the part of the writ petitioner. Thus, the writ petitioner cannot be held responsible for the excess payment made in this regard.

4.The Hon'ble Supreme Court of India in the case of State of Punjab and others v. Rafiq Masih (White Washer) & others case, (2015) 4 SCC 334. Paragraph-18 of the judgment is relevant for the facts of the case on hand and the same is extracted hereunder:-

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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 Hon'ble Supreme Court of India held that the recovery from the retired employees on account of erroneous fixation cannot be recovered and even if the same was paid mistakenly. In this view of the matter the order impugned in this writ petition cannot be sustained. Subsequently, the Hon'ble Supreme Court of India has clarified from the above Judgment that if any undertaking was obtained from the pensioners/employees at the time of granting the revision of pay then, the recovery can be imposed. But, in the case on hand no such undertaking was given by the writ petitioner at the time of receiving the revised pension as well as the subsequent pension.

6.Such being the factum of the case, the order impugned in this writ petition issued by the second respondent in proceedings No.Na.Ka.03/14/A1 dated 03.01.2014 is quashed and the amount already recovered from the pension of the writ petitioner is directed to be disbursed, within a period of eight weeks from the date of receipt of a copy of this order.

7.Accordingly, the writ petition stands allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

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ASSISTANT REGISTRAR

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SUB-ASSISTANT REGISTRAR

To

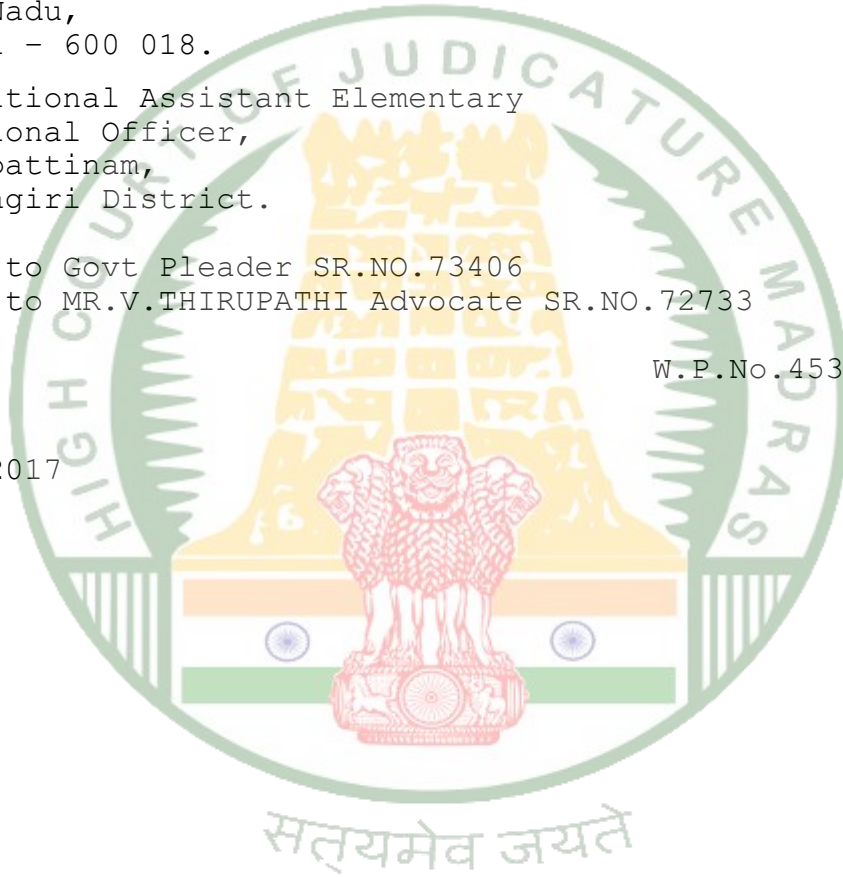
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Krishnagiri District.

+1CC to Govt Pleader SR.NO.73406

+1CC to MR.V.THIRUPATHI Advocate SR.NO.72733

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KJI [CO]
MK:22/11/2017



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