IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-12-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30871 of 2014
And
M.P.No.1 of 2014

V.D.Devarajulu .. Petitioner

-vs-

1.Financial Adviser and Chief Accounts Officer,
Integral Coach Factory,
Ayyanavaram,
Chennai-600 038.

2.The Manager/Link Branch,
Canara Bank,
Accounts Section,
770A, Spencer Tower,
Mount Road,
Chennai-600 002.

3.The Manager,
Canara Bank,
Ayyanavaram Branch,
Ayyanavaram,
Chennai-600 023. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent's impugned order No.AES/SETT/7125 dated 19.9.2014 and to quash the same.

For Petitioner	-	Mr.R.Thirugnanam
For Respondent-1	-	Ms.A.Sri Jayanthi
For Respondent-2	-	Mr.P.Sesubalan Raja
For Respondent-3	-	No Appearance

ORDER

The order of revision of pay and recovery issued by the first respondent in proceedings dated 19.9.2014, is under challenge in this writ petition.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner was employed in Railway Protection Force and he was promoted upto the level of Sub Inspector and thereafter, retired from service on 30.6.1994, on attaining the age of superannuation. The writ petitioner had received all the terminal and pensionary benefits based on his last pay drawn and thereafter receiving the monthly pension in accordance with the Pension Rules. While-so, the writ petitioner has received the impugned order surprisingly in the year 2014 and found that the respondents have imposed recovery on the pension by stating that there was an excess payment paid to the writ petitioner from 1.1.2006 onwards.

3. The learned counsel for the writ petitioner urged this court by stating that the revision of pay and pension were done by the Competent Authority in accordance with the rules and therefore, the writ petitioner has not made any mis-representation in respect of the revision of pay or pension. However, the revision was done by the respondents through their Establishment Section of the Office. Thus, the recovery imposed, cannot be sustained.

4. The learned counsel, appearing on behalf of the respondents, states that there was an error in respect of fixation of pay and revision and on account of the error occurred, the respondents have to necessarily re-fix the pension and impose recovery.

5. The learned counsel for the respondents states that the rectification of an error, cannot be construed as illegal and therefore, the respondents have rightly revised the pension and imposed recovery.

6. Considering the arguments advanced, both by the learned counsel for the writ petitioner as well as the respondents, this Court is of the opinion that no doubt an error crept in can be corrected by the authorities. However, the revision of pay was extended to the writ petitioner, at the instance of the respondents, and the entire calculation or otherwise, had been carried out by the Establishment Section of the Office of the respondents. There is no material on record to show that, at any

point of time, there was a mis-representation on the part of the writ petitioner. This being the factum of the case, the recovery imposed is certainly untenable.

7. With regard to the fixation of pay and pension, this Court is of the opinion that the respondents are at liberty to do so in accordance with the rules in force. However, an opportunity is to be afforded to the writ petitioner to explain and defend his case in respect of fixation of pay and pension.

8. Admittedly, the impugned order in this writ petition has been issued without issuing any notice to the writ petitioner and therefore, the same is in violation of the principles of natural justice. Further, the Hon'ble Supreme Court of India in the case of State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334], held that the recovery from the retired employees are impermissible and in the case on hand, there was no misrepresentation on the part of the writ petitioner nor the writ petitioner has given any undertaking in this regard. Paragraph-18 of the judgment, cited supra, 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible 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."

Clause 2 to paragraph 18 of the judgment, cited supra, enumerates that the recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery, is impermissible.

9. The writ petitioner was retired from service on 30.6.1994 and the impugned order has been passed after a lapse of 20 years from the date of retirement of the writ petitioner. Thus, the impugned order deserves to be scrapped. The learned counsel for the writ petitioner also states that the writ petitioner is entitled for an opportunity even in relation to the re-fixation of pay and pension and the submissions made by the learned counsel, in this regard, is certainly reasonable and legally permissible.

10. In this view of the matter, the impugned order passed by the first respondent in proceedings No.AES/SETT/7125 dated 19.9.2014 is quashed and the respondents are directed to issue show cause notice in respect of the revision of pay alone and thereafter, on receipt of explanations/objections from the writ petitioner, consider the same and pass orders in respect of the revision of pay as well as the pension, in accordance with the rules.

11. In respect of recovery, the same cannot be effected and if any amount already recovered from the writ petitioner, the same is to be reimbursed, within a period of twelve weeks from the date of receipt of a copy of this order.

12. In these terms, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.Financial Adviser and Chief Accounts Officer,
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3.The Manager,
Canara Bank,
Ayyanavaram Branch,
Ayyanavaram,
Chennai-600 023.

+ 1 cc to Ms.A.Sri Jayanthi Advocate,SR.88221

+ 1 cc to Mr.R.Thirugnanam Advocate,SR.87916

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nr 27/12/2017