

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.9772 of 2017

M.Loganathan

.. Petitioner

-vs-

1. The Regional Joint Director
of Treasuries and Accounts
Chennai Region
Chennai 600 035
 2. The Treasury Officer
Tiruvallur District
Tiruvallur
 3. The Assistant Treasury Officer
Sub Treasury
Ponneri, Tiruvallur District
 4. The Headmaster
MKV Government Higher Secondary School
Arani 601 101
Tiruvallur District
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent relating to the unnumbered proceedings dated 20.01.2017 and quash the same and issue consequential directions to the respondents to continue to disburse the pension amount as he was drawing prior to the impugned order, without any reduction or recovery and also to refund the amount recovered, if any.

For Petitioner :: Mr.M.Ravi

For Respondents:: Mr.T.M.Pappiah
Special Government Pleader

ORDER

The petitioner has challenged the proceedings of the third respondent dated 20.1.2017, in and by which a sum of Rs.1,70,874/- has been sought to be recovered from his pension

on the basis of an audit objection.

2. The petitioner retired from service way back on 31.5.2000 from the post of Middle School Headmaster and he has been receiving the monthly pension as per PPO No.C/111448/EDG dated 12.1.2000 through the Sub Treasury, Ponneri and the payment of pension has been duly revised in accordance with the Government Orders and letters from time to time and the last being the Government Letter No.14483/CMPC/2011-1 dated 5.1.2012. All of a sudden, the Assistant Treasury Officer, Ponneri, the third respondent herein, in his letter dated 20.1.2017, has informed the petitioner that during the inspection of the record in the Sub Treasury, Ponneri, it was found that an excess pension of Rs.1,70,874/- has been paid to him and therefore sought to recover the same. When the third respondent has sought to recover a sum of Rs.1,70,874/- on the basis of an audit objection, it is not known how without even issuing a copy of the audit objection calling for explanation from the petitioner, can proceed to recover the said amount in instalments. Under similar circumstances, this Court in W.P.No.3091 of 2017, finding fault with the order passed by the very same respondent to recover a sum of Rs.1,14,424/- from the writ petitioner therein on the ground of excess pension, following the judgment of the Apex Court in State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334, has allowed the writ petition by order dated 8.2.2017, after setting aside the impugned order that was passed behind the back of the petitioner therein. It is stated that the said order also has been implemented by the respondents on 27.3.2017 by refunding the amount to the writ petitioner therein.

3. Mr.T.M.Pappiah, learned Special Government Pleader takes notice on behalf of the respondents.

4. In State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334, the Apex Court, in paragraph-18, has held 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 herein above, we may, as a ready reference, summarise the following few situations wherein recoveries by the employers, would be impermissible in law:-

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

[2] Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

[3] 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.

[4] 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.

[5] 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. Applying the above observations of the Apex Court to the present case, this Court, finding no proper explanation from the learned Special Government Pleader for the respondents for issuing the ex parte order for recovery without any prior notice to the petitioner, is inclined to set aside the impugned order. Accordingly, the impugned order is set aside and the writ petition stands allowed as prayed for. Needless to mention that the respondents shall refund the amount deducted, if any, to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently, W.M.P.No.10753 of 2017 is closed. No costs.

WEB COPY
-s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

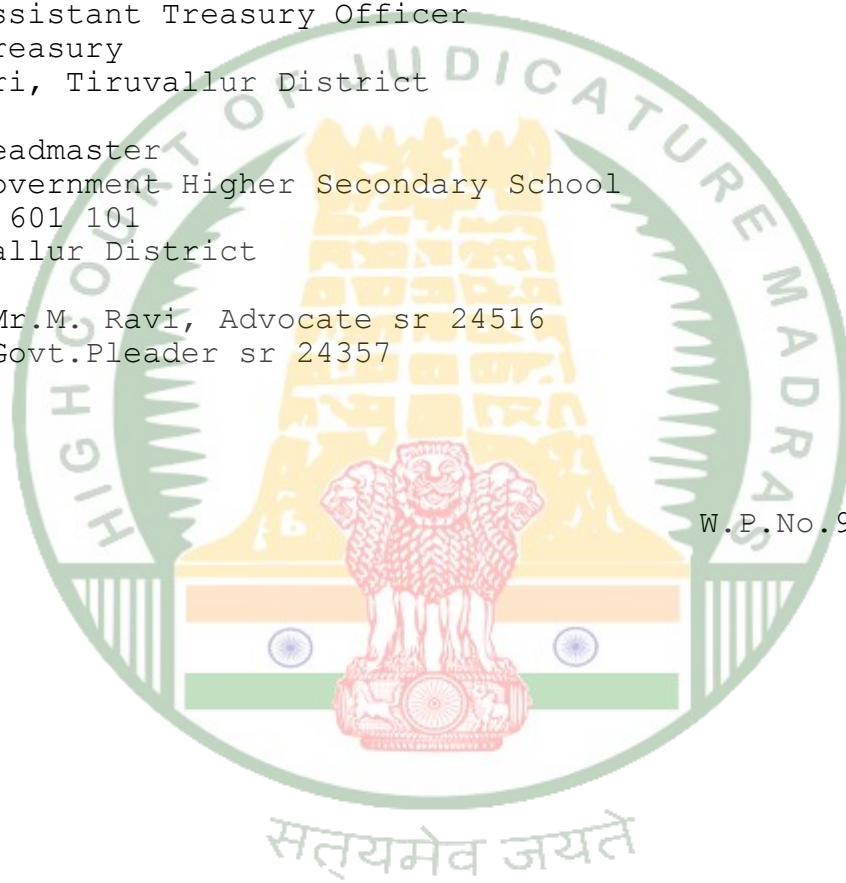
To

1. The Regional Joint Director
of Treasuries and Accounts
Chennai Region
Chennai 600 035
2. The Treasury Officer
Tiruvallur District
Tiruvallur
3. The Assistant Treasury Officer
Sub Treasury
Ponneri, Tiruvallur District
4. The Headmaster
MKV Government Higher Secondary School
Arani 601 101
Tiruvallur District

+1 CC to Mr.M. Ravi, Advocate sr 24516
+1 CC to Govt.Pleader sr 24357

PVS (CO)
sp/5/5

W.P.No.9772 of 2017



WEB COPY