

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.3091/2017 & WMP.No.3004/2017

V.N.Jayaraman

..

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 Assistant Elementary Educational Officer
Minjur, Tiruvallur District.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records on the file of the 3rd respondent relating to the un-numbered 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.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.P.Senthilvel, GA

ORDER

By consent, the writ petition is taken up for final disposal. Mr.P.Senthilvel, learned Government Advocate accepts notice on behalf of the respondents.

2 The petitioner retired from service as a Special Grade Middle School Headmaster in the Panchayat Union Middle School, Velur, Minjur Panchayat Union, on 30.06.1991 and in view of the sincere and unblemished service put up by the petitioner,

his services were extended till the end of the academic year and he was permitted to retire from service on 31.05.1992. According to the petitioner, he is in receipt of monthly pension as per PPO NO.A.900047 dated 01.07.1992 through the Sub Treasury, Ponneri. However, to the shock and surprise of the petitioner, the 3rd respondent has communicated the impugned order dated 20.01.2017 on the ground that when audit inspection was conducted in the treasury, excess amount has been fixed by way of pension and accordingly, a sum of Rs.1,14,424/- has been paid to the petitioner in excess and therefore, the said amount will be recovered in instalments. Challenging the legality of the said order, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner would submit that the petitioner is aged about 83 years and to his shock and surprise, the 3rd respondent has passed the order of recovery without even putting the petitioner on notice and since the said order is per se violation of principles of natural justice, he prays for interference.

4 The Court heard the submissions of MR.P.Senthilvel, learned Government Advocate appearing for the respondents and he seeks time to get instructions.

5 A perusal of the impugned order would disclose that the 3rd respondent has passed the order of recovery based on audit objections and admittedly, the petitioner has not at all been put on notice. In the considered opinion of the Court, the impugned order of recovery passed by the 3rd respondent is per se in violation of the principles of natural justice for the reason that the order visits the petitioner with grave civil consequences and in all fairness, the petitioner is expected to be put on notice before ordering recovery and unfortunately, it has not been done so. Therefore, the impugned order warrants interference.

6 At this juncture, the learned counsel for the petitioner has also drawn the attention of this Court to the decision rendered by the Hon'ble Supreme Court of India reported in [2015] 4 SCC 334 [State of Punjab and others Vs. Rafiq Masih [White Washer] and others] and would submit that in the light of the ratio laid down by the Hon'ble Apex Court in the decision cited supra, the matter need not be remanded back.

7 It is relevant to extract paragraph 18 of the Rafiq Masih's case [cited supra] :-

"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:-

[1]Recovery from the employees belonging to Class III and Class IV service [or Group C and Group D service].

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

[3]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.

[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."

8 In view of the reasons assigned above, coupled with the ratio laid down by the Hon'ble Supreme Court in the decision cited supra, the writ petition is allowed and the impugned order passed by the 3rd respondent dated 20.01.2017 is set aside and if any amount already deducted by way of installments, it should be repaid to the petitioner forthwith. No costs. Consequently, the connected miscellaneous petition is closed.

sd/

Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

AP
To

1.The Regional Joint Director of
Treasuries and Accounts,
Chennai Region, Chennai 600 035.

2.The Treasury Officer
Tiruvallur District, Tiruvallur.

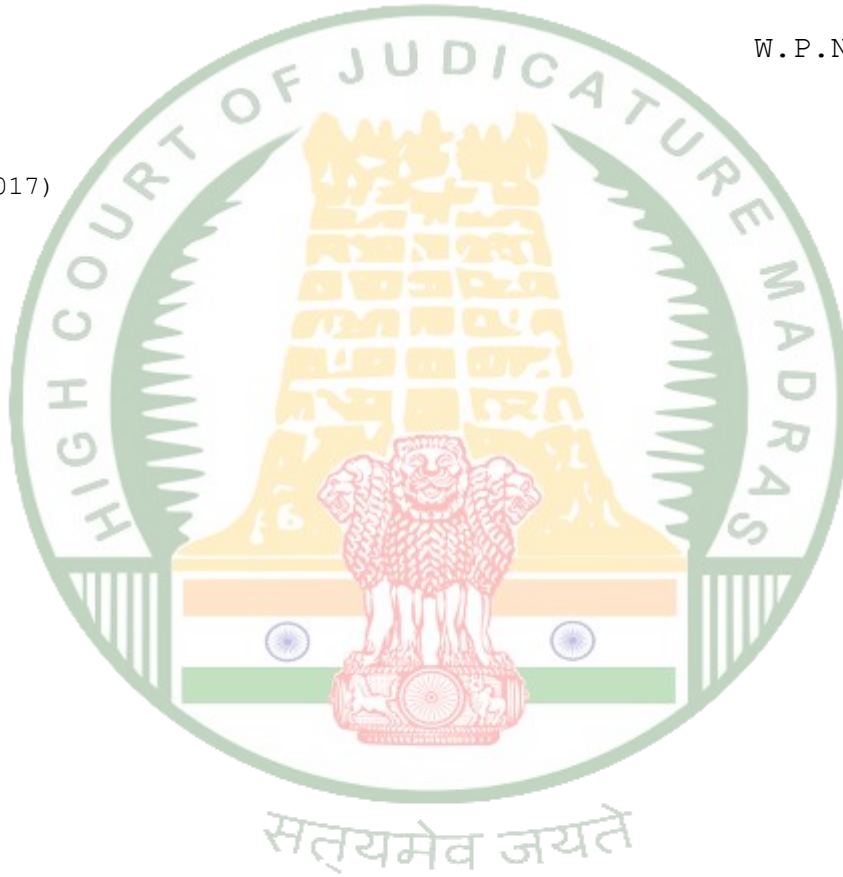
3.The Assistant Treasury Officer
Sub Treasury, Ponneri,
Tiruvallur District.

4.The Assistant Elementary Educational Officer
Minjur, Tiruvallur District.

+lcc to Mr.Ravi Advocate SR.No.8228
+lcc to Government Pleader SR.No.8882

W.P.No.3091/2017

MG(CO)
GN(17/02/2017)



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