

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. Nos. 21554 to 21559 of 2015
and

W.M.P. Nos. 1256 to 1261 of 2016
M.P. Nos. 1,2,1,2,1,2,1,2,1 & 2 of 2015

Nagarajan
S/o.Dharmalingam ... Petitioner in W.P.No.21554/2015

Govindasamy ... Petitioner in W.P. No 21555/2015.

Mohankumar ... Petitioner in W.P. No 21556/2015.

Banumathi ... Petitioner in W.P. No 21557/2015.
substituted as L.R. of
Deceased P.Anbumani
as per order dated
16.08.2009 in W.M.P. No 6990/2017
in W.P. No 21557/2015.

Thangaraj ... Petitioner in W.P. No 21558/2015.

Vaidyanathan ... Petitioner in W.P. No 21559/2015.

Vs.

1. The Treasury Officer,
Hosur Treasury,
Manjakuppam,
Cuddalore.
 2. The Assistant Treasury Officer,
Office of the Sub Treasury Officer,
Kattumannarkoil,
Cuddalore District.
 3. The Assistant Director of Animal Husbandry,
Department of Animal Husbandry,
Chidambaram, Bhuvanagiri,
Chidambaram Taluk,
Cuddalore District.
- ...Respondents
in all W.Ps

Prayer in all Wps : Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for records pertaining to the order made in Na.Ka. Nos. 350/A1/2015, 353/A1/2015, 349/A1/2015, 352/A1/2015, 350/A1/2015, 348/A1/2015 dated 04.06.2015 issued by the 2nd respondent and quash the same and further directing the 2nd respondent to repay the amount deducted from the monthly pension of the petitioners.

For Petitioners : Mr.G.Pugazhenth

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

Challenging the orders of recovery dated 04.06.2015 issued by the Assistant Treasury Officer, office of the Sub Treasury Officer, Kattumannarkoil, Cuddalore District, the present writ petitions are filed.

2. The writ petitioners are State Pensioners and the impugned orders of recovery were issued on the ground that on account of erroneous fixation, the excess payment was made to the writ petitioners and during the course of audit inspection, the error was found in fixation of pay in respect of the writ petitioners and accordingly the orders of recovery were issued.

3. The learned counsel appearing for the writ petitioners contended that no notice or opportunity was given to the writ petitioners before issuing the impugned orders of recovery and therefore, the order impugned is in violation of the principles of natural justice. Further, it is contended that the writ petitioners are retired employees and no recovery can be imposed on retired employees, since the revision of pension was granted pursuant to the calculations made out by the department and there is no misrepresentation or otherwise on the part of the writ petitioners. Even in case of granting some excess pension on account of miscalculation, the same cannot be recovered after some years and therefore the impugned orders of recovery are liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents, opposing the contention of the learned counsel appearing for the writ petitioners, submitted that the recoveries were imposed on account of audit objection, wherein it was found that an excess payment was made in favour of the writ petitioners. This apart, the writ petitioners have given an undertaking that they will reimburse the excess payment even if

found at a later point of time. However, the revision of pension was granted only by the respondents and not on the representation of the writ petitioners. Further, there is no misrepresentation on the part of the writ petitioners while granting revision of pension. Thus, the recovery imposed after a lapse of some years cannot be enforced in view of the judgment of the Hon'ble Supreme Court of India in the case of State of Punjab V. Rafiq Masih (white washer case) reported in (2015) 4 SCC.

5. Paragraph 18 of the judgment is relevant for deciding the case on hand, which 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."

6. The case of the writ petitioners fall in category (ii) of the judgment. Since the writ petitioners are retired employees, no recovery can be imposed. Thus, applying the legal principles settled in the case cited supra, the impugned orders cannot be sustained. Accordingly, the impugned orders passed by the second respondent in proceedings in Na. Ka. Nos. 350/A1/2015, 353/A1/2015, 349/A1/2015, 352/A1/2015, 350/A1/2015, 348/A1/2015 dated 04.06.2015 are quashed and the writ petition stands allowed. However, there is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

may

To

1. The Treasury Officer,
Hosur Treasury,
Manjakuppam,
Cuddalore.
2. The Assistant Treasury Officer,
Office of the Sub Treasury Officer,
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3. The Assistant Director of Animal Husbandry,
Department of Animal Husbandry,
Chidambaram, Bhuvanagiri,
Chidambaram Taluk,
Cuddalore District.

+6 Ccs to Mr.G. Pugazhenth, Advocate sr 58994.

+1 Cc to The Govt. Pleader sr 59315.

W.P. Nos. 21554 to 21559 of 2015

MP (CO)

sp(11/10/2017)