

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2017

CORAM

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

W.P.No.25405 of 2017
and W.M.P.No.26851 & 26852 of 2017

M. Kalimuthu

.. Petitioner

vs

1.The State of Tamil Nadu
Rep.by its Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.The Accountant General (A & E),
Tamil Nadu Authorisation of
Revision of Family Pension &
Death Gratuity,
Chennai-18.

3.The Assistant Treasury Officer,
Thiruchengode,
Namakkal District.

4.The Chief Educational Officer,
Thiruchengode,
Namakkal District,
Namakkal.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ, order or direction to call for the records on the file of the 3rd respondent in connection with the order passed by him in Ka.Mu.A.No.100/2017/D, dated 30.06.2017 and quash.

For Petitioner : Mr. R. Singaravelan, Senior counsel
For Mr.V.S.Jagadeesan

For Respondents : Mr. K. Dhananjayan
Special Government Pleader
for R1,R3 & R4

O R D E R

The relief sought for in this writ petition is to quash the order of recovery issued by the third respondent in proceedings dated 30.06.2017.

2. The learned senior counsel appearing on behalf of the writ petitioner submits that the writ petitioner is a family pensioner and wife of the writ petitioner was working as Senior Grade Teacher and subsequently, passed away on 03.03.2007. Thereafter, the writ petitioner has been receiving the family pension as per the fixation done by the respondent. There was no misrepresentation in respect of revision of pension and the revisions are periodically granted in accord with the Government orders in force. Under these circumstances, suddenly, an order of recovery has been passed by the third respondent in proceedings dated 30.06.2017, stating that on account of an audit objection. The objection was raised in relation to excess payment to the writ petitioner.

3. Even in case, there was an excess payment, on the same cannot be recovered. Now, the writ petitioner is a family pensioner the revision was done by the respondent at their own volition and not on the basis of any misrepresentation by the writ petitioner. Such being the factum of the case, the order of recovery is unsustainable. The Hon'ble Supreme Court of India in the case State of Punjab Others Vs Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334. settled in the legal principles in the matter of recovery of pension and salary from the employees, Paragraph No.18 of this judgment is relevant for the purpose of this case 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 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.

4. Clause 2 paragraph 18 narrates that the recovery cannot be imposed on the retired employees and in the case on hand the writ petitioner is a family pensioner and therefore, the recovery imposed on the writ petitioner cannot be sustained by the respondent and no recovery could be effected as per Government orders in force.

5. In this view of the matter the order impugned in this writ petition issued by the third respondent in proceedings dated 30.06.2017 is quashed and the writ petition stands allowed. Consequently, connected Miscellaneous Petition are also closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.

2.The Accountant General (A & E),
Tamil Nadu Authorisation of
Revision of Family Pension &
Death Gratuity,
Chennai-18.

3.The Assistant Treasury Officer,
Thiruchengode,
Namakkal District.

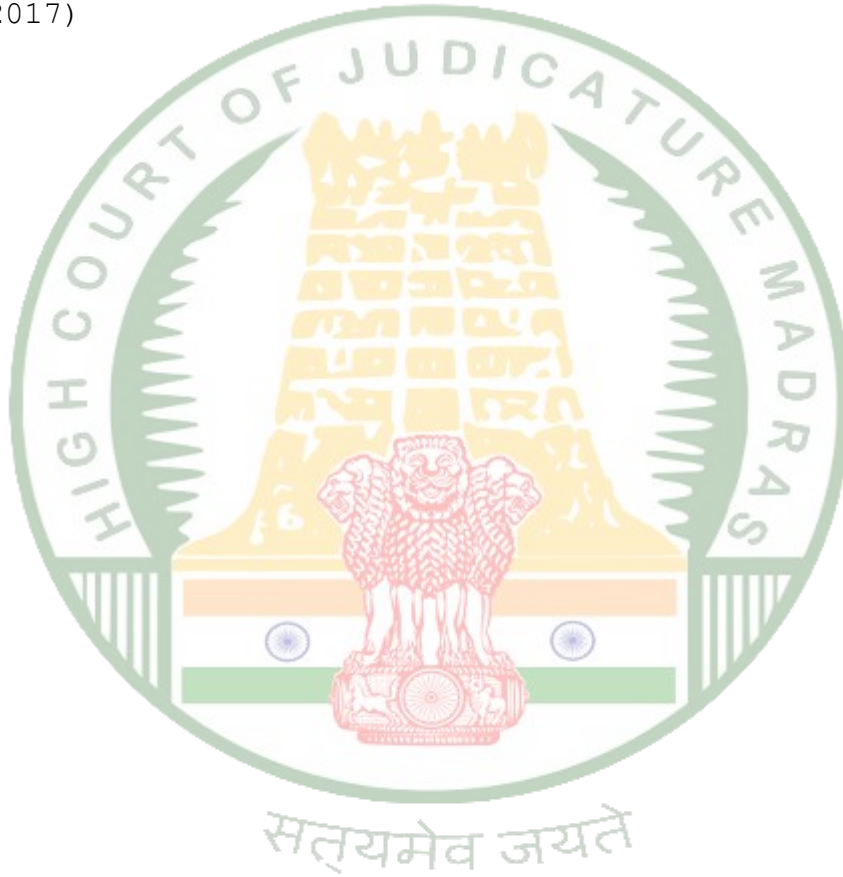
4.The Chief Educational Officer,
Thiruchengode,
Namakkal District,
Namakkal.

+1cc to the Government Pleader, S.R.No.69840

W.P.No.25405 of
2017

and W.M.P.No.26851 & 26852 of 2017

VGII (CO)
GN (26/10/2017)



WEB COPY