

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31239 of 2015

and

W.M.P.Nos.1 of 2015 & 30901 of 2016

P.Subramanian

... Petitioner

Vs.

1.The Secretary to Government,
Personnel and Administrative Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.

3.The Director of Town Panchayats,
Kuralagam,
Chennai - 600 108.

4.The Assistant Director Town Panchayats,
Thirunelveli Zone,
Thirunelveli District

5.The Executive Officer,
Sankar Nagar Town Panchayat,
Thirunelveli District.

6.The Principal Accountant General
(Accounts and Entitlements)
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records of the 6th Respondent pertaining to the Proceedings No.Pen.12/U.No.1/PPO.No.C217110/SCN/15-16/64/40344 dated

17.07.2015 and Proceedings No.Pen.12/U.No.1/PPO.
No.C217110/RD/DW/11213229/15-16 dated 24.08.2015 and quash the
same and consequently forbear the 6th Respondent herein from
effecting recovery of alleged excess paid pensionary benefits
from the Dearness Allowance on the pension of the Petitioner as
illegal.

For Petitioner : Mr.N.Nithianandam

For Respondents : Mr.K.Dhananjayan
Special Government Pleader (R1 to R4)

Mr.R.A.S. Senthilvel (R5)

Mr.V.Vijayashankar (R6)

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O R D E R

Heard Mr.N.Nithianandam, learned counsel for the petitioner
and Mr.K.Dhananjayan, learned Special Government Pleader for the
respondents 1 to 4, Mr.Raj Senthilvel for the fifth respondent
and Mr.V.Vijayashankar for the sixth respondent.

2.The orders of recovery dated 17.07.2015 and 24.08.2015
issued by the sixth respondent are under challenge in this writ
petition.

3.The learned counsel appearing for the writ petitioner
made a submission that the writ petitioner was holding the post
of Executive Officer in Sankar Nagar Town Panchayat,
Thirunelveli District and retired from service on 31.03.2008, on
attaining the age of superannuation. However based on the last
pay drawn particulars and the Government Order in force his
pension was fixed and he has received the pension in accordance
with the Government Order. Suddenly, the impugned order was
passed revising the pension by stating that the revised pension
fixed to the writ petitioner was erroneous and an over payment
was made to him. In this regard, the sixth respondent issued
the orders in proceedings dated 17.07.2017 and 24.08.2015.

4.On a perusal of the orders, this Court is of the view
that the error took place with regard to the revision of pay can
be corrected. However, the recovery imposed not in accorded
with the legal principles laid down by the Hon'ble Supreme Court
in the case of State of Punjab and others v. Rafiq Masih (White
Washer) & others case, (2015) 4 SCC 334. Paragraph-18 of the
judgment is relevant for the facts of the case on hand 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) 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.

(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."

5. The Hon'ble Supreme Court of India has granted exemption in respect of the recovery as far as the retired employees are concerned in clause 2. In view of the principles laid down by the Hon'ble Supreme Court, no recovery can be imposed in respect of retired employees. However, the error took place in relation to the revision of pay shall be corrected and therefore, it is left open to the respondents to correct the error in fixation of pay or revision of pension, in respect of recovery, the same can not be done.

6. Accordingly, the impugned orders passed by the sixth respondent in proceedings dated 17.07.2015 and 24.08.2015 are quashed and the respondents are at liberty to refix the pension in accordance with the Government Orders and the Rules in force. If any amount has been already recovered from the pension of the writ petitioner the same is directed to be reimbursed, within a period of six weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Personnel and Administrative Department,
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+1cc to Mr.V.VIJAYASHANKAR, Advocate, S.R.No.6619
+1cc to Mr.N.NITHIANANDAM, Advocate, S.R.No65739.

RSY (CO)
US 25/10/2017

W.P.No.31239 of 2015



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