IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2017

CORAM

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

W.P.No.36182 of 2015
and
M.P.Nos.1 and 2 of 2015

M.Rathinam ..Petitioner

Vs

1.The Assistant Audit Officer (A.A.O)
The Principal Accountant General (A&E)
Chennai 600 018.

2.The Additional Treasury Officer
Krishnagiri District. .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to Para 2(vi) of the proceedings of the first respondent herein and proceeding bearing Na.Ka.3893/2015/A4 dated 21.09.2015 of the second respondent and consequential proceedings bearing br/K/Na.Ka.3893/2015/A4 dated 21.09.2015 of the second respondent herein and quash the same.

For Petitioner : Mr.V.Suthakar
For Respondents : Mrs.T.S.Selvarani for R1
: Mr.K.Dhananjayan for R2
Special Government Pleader

O R D E R

The order of recovery dated 21.09.2015 issued by the respondent is under challenge in this writ petition.

2. On a perusal of the order of recovery it is seen that no opportunity or notice was provided to the writ petitioner and the recovery was imposed from the pension of the writ petitioner in proceedings dated 21.09.2015. The learned counsel appearing for the writ petitioner states that the writ petitioner is a State Pensioner and retired from the service on 28.02.1998. Now, the writ petitioner is aged about 75 years, and the recovery from the pension will certainly affect his livelihood.

3. The writ petitioner is an aged person and certain medical treatment and attention are required to him at this age. The benefit of pension is required for the purpose of the regular

routine medical treatment and livelihood of the writ petitioner.

4. On 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 is not in accordance with the legal principles settled by the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) & others case, (2015) 4 SCC 334. Paragraph No.18 of the judgment is relevant for the facts of the case on hand and the same is extracted here under:

> Paragraph No.18: It is not possible to postulate all situation 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 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.

5. Clause II of Paragraph No.18 deals with the pension and accordingly, recovery from the pension is not permissible and therefore, the case on hand, deserves consideration in view of the precedent laid down by the Hon'ble Supreme Court and the impugned order of recovery is liable to be scrapped. Thus, the impugned order passed by the second respondent in proceedings dated 21.09.2015 is quashed. However, the respondents are at

liberty to correct the error with regard to the fixation of pay.

6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Assistant Audit Officer (A.A.O)
The Principal Accountant General (A&E)
Chennai 600 018.

2.The Additional Treasury Officer
Krishnagiri District.

+1 cc to Mr.V.Suthakar,advocate,sr.68966

+1 cc to Govt.Pleader,sr.69476.

mr(co)
krd 2/11