IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM

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

W.P.No.6114 of 2015
and M.P.No.1 of 2015 and W.M.P.No.8492 of 2017

V.Ananthakrishnan ... Petitioner

Vs

1.The District Collector,
Krishnagiri District.

2.The Joint Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 005.

3.The Principal Secretary to Government,
Finance (P.C.) Department,
Fort.St.George,
Chennai - 600 009. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Proceedings of the 2nd respondent issued in Letter No.Va.Nee.3(5)/35819/2013, dated 04.09.2013 and the consequential proceedings of the 1st respondent in Na.Ka.No.12498/2013/A1, dated 11.03.2014 and in Na.Ka.No.12498/2013/A1, dated 14.07.2014 and quash the same and to direct the respondents to restore the Scale of Pay of the petitioner as fixed in the Revised Scale of Pay, as on 12.12.2007, in the category of Tahsildar with all attendant and consequential benefits and to send the Revised Pension proposal with reference to the last drawn pay arising out of the fixation of pay as on 12.12.2007 in the revised scale of pay and to pay the arrears thereof and further direct the respondents to refund the Recovery amount of Rs.1,33,451/- remitted by the petitioner in the Treasury on 20.08.2014.

For Petitioner : Mr.N.R.Chandran, Senior Counsel for
M/s.R.Balasubramanian

For Respondents: Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

The order of recovery issued by the second respondent in proceeding dated 4.9.2013 and the consequential proceedings of the first respondent dated 11.3.2014 and 14.7.2014 are under challenge in this writ petition.

2. The learned senior counsel Mr.N.R.Chandran appearing on behalf of the writ petitioner contended that the writ petitioner was initially appointed as Junior Assistant on 8.3.82 and thereafter promoted to the level of Tahsildar with effect from 1.9.2007. The writ petitioner was further promoted to the post of Deputy Collector by way of transfer of service with effect from 22.9.2011 and retired from service on 30.6.2013 on attaining the age of superannuation. Revision of pay as well as the pensionary benefits were calculated in accordance with the Government Orders to the writ petitioner. It is the department which carried out the revision of pay and there was no misrepresentation on the part of the writ petitioner in relation to the re-fixation and revision of pay. Thus, the pay and pension fixed and disbursed to the writ petitioner was in accord with the Government Orders in force at the relevant point of time. However, based on an audit objection, an order of recovery was issued to the writ petitioner after his retirement, even without giving any show cause notice. The learned senior counsel contends that issuing an order of recovery without show cause notice is in violation of the principles of natural justice and further no recovery can be imposed after the retirement of an employee.

3. In this regard, it is relevant to cite the authoritative pronouncement of the Hon'ble Supreme Court of India 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."

4. Clause (ii) of the judgment cited supra states that recovery from the retired employees would be impermissible. Thus, in the case on hand, the writ petitioner is a retired employee and recovery cannot be imposed even if any excess payment has been disbursed based on a wrong calculation.

5. The learned Additional Government Pleader for the respondents submitted that the writ petitioner is a Grade-I Officer and therefore he was aware of the wrong fixation and the fixation done in this regard requires to be corrected for all future purposes. Otherwise, it will be loss of money to the State exchequer.

6. This Court is of the opinion that the erroneous fixation can be corrected at any point of time if an objection is raised by the audit officers. Thus, the error, if any, in re-fixation of pay shall be corrected by the competent authorities, but the recovery imposed on the writ petitioner cannot be sustained. Accordingly, the writ petition stands partly allowed in respect of the recovery imposed and the amount recovered from the writ petitioner is directed to be reimbursed within a period of four weeks from the date of receipt of a copy of this order and in respect of the re-fixation, it is left open to the competent authorities to correct the same in accordance with the rules and as per the Government Orders in force.
Consequently, M.P.No.1 of 2015 and W.M.P.No.8492 of 2017 are closed. However, no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ms/ss

To

1. The District Collector
Krishnagiri District

2. The Joint Commissioner of
   Revenue Administration
   Chepauk
   Chennai 600 005

3. The Principal Secretary to Government
   Finance (P.C.) Department
   Fort St. George
   Chennai 600 009

+1cc to MrR.Balasubramanian, Advocate, S.R.No. 61195
+1cc to Government Pleader Advocate, S.R.No. 61936

W.P.No.6114 of 2015
and M.P.No.1 of 2015 and
W.M.P.No.8492 of 2017

GN(13/09/2017)