

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-11-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27549 of 2013

And

M.P.No.1 of 2013

K.Rajarethinam

.. Petitioner

-vs-

1.The Director of School of Education,
Higher Secondary,
DPI Compound,
College Road,
Chennai-600 006.

2.Director of Pension,
Directorate of Pension,
DMS Compound,
Teynampet,
Chennai-600 006.

3.The Regional Joint Director of Treasuries
and Accounts,
Trichy,
Trichy District.

4.The Assistant Treasury Officer,
Mayiladuthurai,
Nagapattinam District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with the order No.Proc. Pdl.No.252/2013/A3 dated 24.6.2013 passed by the fourth respondent herein and quash the same, consequently direct the third and fourth respondents herein to refund the recovered pension amount to the petitioner.

For Petitioner

- Dr.R.Sampathkumar

For Respondents

- Mr.K.Thangapandi,
Government Advocate.

O R D E R

The order of recovery issued by the fourth respondent in proceedings dated 24.6.2013 is under challenge in this writ petition.

2. The writ petitioner was working as a Tamil Teacher at T.G.N. Municipal Higher Secondary School at Mayiladuthurai and retired from service on 30.6.1999 on attaining the age of superannuation.

3. However, on account of certain audit objections, the Assistant Treasury Officer, Mayiladuthurai, issued an order of recovery in proceedings dated 24.6.2013, stating that during an inspection by the Regional Joint Director of Treasuries and Accounts, Trichy, an excess payment of pension was noticed and accordingly, the recovery of Rs.96,711/- was imposed.

4. The writ petitioner states that the pension was revised as per the Government Orders in force during the relevant point of time and there was no misrepresentation or otherwise on the part of the writ petitioner. Thus, the excess pension, if any, granted, cannot be recovered from the writ petitioner.

5. This apart, the writ petitioner is a pensioner and aged about 72 years at the time of filing the writ petition and now he would be about 76 years of age. Thus, the recovery of pension will affect his livelihood and at this old age, it would be necessary to meet out the medical expenses and in the event of allowing the respondents to recover such alleged excess amount, the writ petitioner will be deprived of his livelihood, including to meet out the medical expenses.

6. The Hon'ble Supreme Court of India in the case of State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334], held that the recovery from the retired employees are impermissible and in the case on hand, there was no misrepresentation on the part of the writ petitioner nor the writ petitioner has given any undertaking in this regard. Paragraph-18 of the judgment, cited supra, 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."

7. In this view of the matter, the order impugned is unsustainable. Accordingly, the impugned order passed by the fourth respondent in proceedings Pdl.No.252/2013/A3 dated 24.6.2003 is quashed and the respondents are directed to reimburse the amount, if any, recovered from the writ petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Director of School of Education,
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Mayiladuthurai,
Nagapattinam District.

+1cc to Dr.R.Sampathkumar Advocate, S.R.No. 82685

WP 27549 of 2013

TR(04/12/2017)

सत्यमेव जयते

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