

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2017

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

W.P. No.33963 of 2016

and

W.M.P. Nos.29309 & 29310 of 2016

and

WMPS 38218 of 2016

N.Durairaj

.. Petitioner

Vs

- 1.The Director of Treasuries and Account,
Chennai - 600 015.
2. The Assistant Treasury Officer,
Kallakurichi, Villupuram District.
3. The Additional Assistant Elementary Educational Officer,
Kallakurichi, Villupuram District.
4. The Principal Accountant General (A & E),
Teynampet, Chennai - 600 018.
5. The District Treasury Officer,
Villupuram, Villupuram District.
6. The Secretary to Government,
Finance (P.C) Department,
Fort St.George, Secretariat,
Chennai - 600 009.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in the report of D.T.A. Cell under item No.38 Thiru. N.Durairaj, C.144943/EDP SBI/K.K.I Vol.4/16 pertaining to the petitioner concerned, of the 1st Respondent herein and the consequential order in Na.Ka.No.0030/2016/A1 dated 11.07.2016 of the 2nd respondent herein and quash the same and to direct the 1st and 2nd respondents to pay the monthly pension which received by the petitioner

prior to the impugned orders, and further direct the respondents to return the amount recovered so far from the pension of the petitioner pursuant to impugned orders.

For Petitioner : Mr.K.Thennan

For Respondents : Mr.K.Dhananjayan
Special Govt. Pleader

O R D E R

The writ petitioner is a State pensioner and challenging the order of recovery dated 11.07.2016, the present writ petition is filed.

2.The learned counsel for the writ petitioner contended that the order of recovery has been issued without issuance of any show cause notice and providing an opportunity to the writ petitioner. Hence, the respondents have violated the principles of natural justice. This apart, the writ petitioner is a pensioner and a senior citizen, aged about 73 years and at this point of time, ordering recovery of pension even without providing an opportunity to the petitioner will affect his livelihood. This apart, the amount of pension was being disbursed as per the calculation of the competent authorities and absolutely there was no misrepresentation or otherwise on the part of the writ petitioner. Therefore, the writ petitioner is not at fault in revising the pension and he was receiving the pension based on the calculation adopted by the competent authorities in this regard. Such being the factum of the case, the writ petitioner cannot be faulted for the erroneous revision of pension.

3.Be that as it may, this Court is of the view that irrespective of the fact whether the revision of pension was carried out in accordance with the rules or not, the respondents had granted the pension on monthly basis and now after a lapse of some years, it is impermissible to recover the same from the pensioners and such a recovery will strenuously affect the livelihood of the pensioners, more specifically at this age. Normally, an aged pensioner will be suffering from various ailments and the regular medical expenses are to be met out by these pensioners.

4.Thus, this Court is of the view that the impugned order of recovery is not only in violation of the principles of natural justice, but it is also unjust, in ordering recovery of excess pension from the old age pensioners.

5.The Hon'ble Supreme Court of India laid down the legal principles in the matter of recovery in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and Others reported in (2015) 4 Supreme Court Cases 334, wherein, his Lordships Jagdish Singh Khehar and Arun Mishra J.J, in paragraph No.18 of the judgment, while speaking for the Bench, laid down the principles in respect of the recovery, which 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.

6.As per the judgment cited supra, recovery from the retired employees are impermissible. Thus, by following the precedent laid down by the Hon'ble Supreme Court of India, the impugned order dated 11.07.2016 is unsustainable and the same is liable to be quashed.

7. Accordingly, the impugned order is quashed and the writ petition stands allowed. However no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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Finance (P.C) Department,
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Chennai - 600 009.

+1cc to Mr.K.Thennan, Advocate, S.R.No.53391
+1cc to the Government Pleader, S.R.No. 53971

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GJII(CO)
GN(22/08/2017)