

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.08.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.498 of 2016

M.Balachandar

.. Petitioner

Versus

1. The Director of Treasuries & Accounts,
Panagal Building, No.1, Jeenis Road,
Saidapet,
Chennai – 600 015.

2. The Treasury Officer,
District Treasury,
Coimbatore.

3. The Assistant Treasury Officer,
Sub Treasury,
Pollachi,
Coimbatore District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3rd respondent in Na.Ka.1166/2015/A3 dated 04.05.2015 and to quash the same and consequently directing the respondents to refund the pensionary benefits so far recovered from the petitioner along with interest.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader.

ORDER

The order of recovery passed by the third respondent in proceedings dated 04.05.2015 is under challenge in this writ petition.

2. The writ petitioner was holding the post of Secondary Grade Assistant and thereafter, granted with a Special Grade in the said post. The petitioner was further promoted to the post of Headmaster in the year 1993, and retired from service attaining the age of superannuation on 30.06.2002. After a lapse of about 13 years from the date of retirement, the third respondent issued an order of recovery, which is impugned in this writ petition in proceedings dated 04.05.2015, stating that there was some error in re-fixation of pay and pension and accordingly, inflicted recovery on the pension of the petitioner.

3. The learned counsel appearing for the petitioner contended that no notice or opportunity was given to the writ petitioner before

passing an order of recovery and the same violates the principles of natural justice. Even the Pension Rules provide an opportunity before inflicting any recovery on pension. Such being the legal position, the order impugned is infirm and the same is to be set aside.

4. This apart the Hon'ble Supreme Court in the case of **Punjab Vs. Rafiq Masik reported in 2015 (4) SCC 334** held under what circumstances an order of recovery can be imposed against the Government employees, paragraph-18 of the said judgment is relevant for the purpose of deciding the case on hand. Further, the writ petitioner falls under the category of retired employees. No recovery can be imposed on the retired employees, even if the fixation is made erroneously and the payment has been made excessively and the said paragraph-18 is extracted here under :

"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 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. In this view of the matter, the grounds raised in this writ petition deserves merit consideration. Accordingly the order of

recovery impugned in this writ petition issued by the third respondent in proceedings Na.Ka.1166/2015/A3, dated 04.05.2015, is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

24.08.2017

Index: Yes/No

AT

To

1. The Director of Treasuries & Accounts,
Panagal Building, No.1, Jeenis Road,
Saidapet,
Chennai – 600 015.
2. The Treasury Officer,
District Treasury,
Coimbatore.
3. The Assistant Treasury Officer,
Sub Treasury,
Pollachi,
Coimbatore District.

सत्यमेव जयते
WEB COPY

S.M.SUBRAMANIAM,J.

AT



W.P.No.498 of 2016

24.08.2017

WEB COPY