BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.5441 of 2014
and
M.P.(MD).Nos. 1 and 2 of 2014

M.R.Paulraj ... Petitioner

vs.

1.The Accountant General,
Office of the Principal Accountant General
(Accounts & Entitlement)
Tamilnadu, Annasalai,
Chennai-10.

2.The Sub Treasury Officer,
Sub Treasury Office,
Vilavancode,
Kanyakumari District. ... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to forbear the respondents from making any further deductions from the pension payable to the petitioner vide Pension Pay Order No.PLK245 and consequently direct the respondents to refund the entire amount deducted along with interest and credit the same to the petitioner's Bank Account No.11287887694 of State Bank of India, Arumanai Branch.

For Petitioner : Mr.S.C.Herold Singh
For Respondents : Mr.S.Kumar
Additional Government Pleader

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to forbear the respondents from making any further deductions from the pension payable to the petitioner vide Pension Pay Order No. PLK245 and consequently direct the respondents to refund the entire amount deducted along with interest and credit the same to the petitioner's Bank Account No.11287887694 of State Bank of India, Arumanai Branch.

2. The brief facts of the case is as follows:

(i) The petitioner was working in the Police Department and serving as Police Constable and got retired from his service on 31.05.1986 and getting pension. His wife, namely, Annamal was also working as School Teacher and she was also drawing pension. After her demise, he was receiving family pension of Rs.7,955/- and also receiving his pension amount of Rs.19,699/- per month. Both the amounts was properly credited into the account of the petitioner at State Bank of India, Arumanai Branch. Surprisingly in December, 2012, the amount paid as pension to the petitioner's account was reduced and only a sum of Rs.6,746/- was credited to his account and when he approached the respondent, he was informed that inadvertently the amount was deducted in due course, the same will be rectified, but till date there was no corrections made and the petitioner is not aware under what conditions the same was deducted and no reasons have been given for the said deduction. Hence, he sent a representation, dated 28.02.2013 and the same was not considered by the said respondent so far and thereafter, he was forced to approach this Court for a direction to the respondents not to deduct the said amount from his pension and to refund of the same, whichever has been deducted till date.

3. Heard the learned counsel on both side and perused the materials available on record. To support his contention, the learned counsel for the petitioner relied on a judgement of the Hon'ble Apex Court in the case of ***State of Punjab and others and Rafiq Masih (White Washer) and others*** reported in ***2015 (4) SCC 344.***

4. Perusal of the above judgement, it is evident that the Honourable Apex Court has been categorically held that action of State in ordering recovery from an employee would be sustainable, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, wrongful, improper and more unwarranted when the corresponding right of the employer to recover the amount as recovered, would be having a harsh and arbitrary effect on the employees and even though, the non-recovery cannot extend to employee merely because he was not accessory to mistake committed by employer, or was not guilty of furnishing any factually incorrect information, or fraud or misrepresentation, however (even though there can be no exhaustive determination or list) recoveries would be impermissible in following circumstances: (i) Recovery from employees belonging to Class III & Class IV (Groups C &D); (ii) Recovery from retired employees, or employees who are due to retire within one year of order of recovery; (iii) Recovery from employees to whom excess payment has been made for a period in excess of five years, before order of recovery is issued; (iv) Recovery where employee is wrongfully required to discharge duties of higher post and has been paid accordingly; and (v) In any other case, where court

concludes that recovery if effected from employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh equitable balance of employer's right to recover. While deciding the above case, the Honourable Supreme Court has categorised wherein the recoveries by the employees would be impermissible in law and in paragraph No.18 it has been held as follows:-

> "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:
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> (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 used.
>
> (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. Whether the excess amount paid was made by the mistake of the employer by miscalculating the entitlement or under any mis-representation by the employees are to be gone into by the said employer and only after giving an opportunity to the petitioner regarding the issue and pass necessary orders, but recovery alone is stayed and the future revision of pension can be arrived at.

6. Hence, based on the above judgment and based on the facts of the case on hand, this Court is of the view that a direction is issued to the second respondent to consider the representation of the petitioner and accordingly, the petitioner is directed to give a fresh representation within a period of two weeks from the date of receipt of the copy of this order and the second respondent is directed to consider the case of the petitioner by giving him an opportunity to put forth his case and the reasons,

if any, has to be explained by him. The said exercise should be completed within a period of eight weeks from the date of receipt of the fresh representation. In the meanwhile, the respondents are restrained from recovery of any amount till the disposal of the fresh representation.

7. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No Costs.

sd/-
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. The Accountant General,
Office of the Principal Accountant
General (Accounts & Entitlement)
Tamilnadu, Annasalai,
Chennai-10.

2.The Sub Treasury Officer,
Sub Treasury Office,
Vilavancode, Kanyakumari District.

+1 CC to Mr.S.C.HEROLD SINGH, Advocate SR.No.90845

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR.No.91125

W.P(MD)No.5441 of 2014
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