



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2017

CORAM

THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD) No.19424 of 2013

AND

W.P (MD) NO.1 OF 2013

Meenakshi Sundaram

... Petitioner

-vs-

The District Treasury Officer,
Office of the District Treasury
Pudukottai

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in Na.Ka.10266/2013/E1 dated Nil 09.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to reimburse the amount recovered from the petitioner on the basis of the impugned order.

For Petitioner : Mr.P.Ganapathi Subramanian

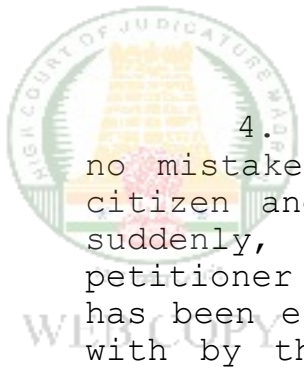
For Respondents: Mr.V.Muruganantham

Additional Government Pleader

O R D E R

The prayer in the writ petition is for a certiorarified mandamus to call for the records of the respondent in Na.Ka.10266/2013/E1 dated Nil 09.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to reimburse the amount recovered from the petitioner on the basis of the impugned order.

2. The short facts leading to the filing of the writ petition is that the petitioner was working as a Village Administrative Officer and he retired from service on 31.08.2002. While so, after 11 years of his retirement, this impugned order has been passed suddenly by the respondents, without giving any notice to the petitioner and other persons covering under the impugned order, wherein, a recovery was sought for against the petitioner for a sum of Rs.31,888/- as if the same has been excessively paid as salary to the petitioner. Challenging the said order, the petitioner has come out with this writ petition.



4. The learned counsel for the petitioner would submit that no mistake is on the part of the petitioner and he is a senior citizen and retired person and after 11 years of his retirement, suddenly, this impugned order has been passed, before which, the petitioner was not put on notice and straight away order of recovery has been effected. Therefore, the same is liable to be interfered with by this Court. In order to substantiate the claim of the petitioner, the learned counsel for the petitioner would heavily rely upon the judgment of the Hon'ble Supreme Court reported in 2015 (4) SCC 334 in the matter of State of Punjab and others v. Rafiq Masih (White Washer) and others.

5. He would further submit that during the pendency of the writ petition, since there is no interim order against the impugned order, the respondents continued to recover the same. Therefore, the petitioner also would be entitled to get back the money already recovered from him. For the said claim, the learned counsel for the petitioner would rely upon yet another judgment of the Hon'ble Apex Court reported in 2009 (3) SCC 475 in the matter of Syed Abdul Qadir and others v. State of Bihar and others.

6. Per contra, the learned Additional Government Pleader appearing for the respondent would submit that the petitioner's pay should have been in the pay band of Rs.5200- 20,200/- + GP 2800. However, the same was wrongly calculated and an excess amount of Rs.636/- was paid every month to the petitioner before his retirement. Therefore, the entire amount paid excessively other than the salary for which, actually the petitioner is entitled to has to be necessarily recovered from the petitioner. This was noticed only subsequently by the respondent Department during the audit objections and therefore, the excess amount paid mistakenly to the petitioner was sought to be recovered. Therefore, the order was issued to recover the same and the entire money was not recovered in one lumpsum and only a portion of the said excess amount sought to be recovered is being recovered by the department. Therefore, there is every justification on the part of the respondents to recover the said amount from the petitioner and hence, the impugned order need not be interfered with.

7. This Court has considered the rival submissions made by both sides.

8. Whatever be the merits of the case as claimed by both sides, the issue is squarely covered by the said judgment and authoritative pronouncement of the Hon'ble Apex Court in 2015 (4) SCC 334 cited supra. In the said judgment, the Hon'ble Apex Court at paragraph No.18 has given five circumstances, under which, recovery cannot be made and in fact the Hon'ble Apex Court has said that such recoveries by the employers would be impermissible in law. Paragraph No.18 of the said judgment is reproduced hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>

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."

9. This petitioner, since is a retired Government Servant, is squarely falls within the category of 18(2) of the said judgment, whereby recovery from the retired employee or the employees, who are due to retire within one year of the order of recovery, was declared to be impermissible in law by the said judgment. If the said ratio is applied to the facts of the present case, certainly, the present impugned order made against the petitioner is liable to be quashed. Accordingly, the impugned order, insofar as it relates to the petitioner is quashed.

10. As has been pointed out by the learned counsel for the petitioner pursuant to the impugned order, recovery was continuously effected and almost the entire sum mentioned in the impugned order has been recovered from the petitioner. In cases of this nature, whether the recovered amount can be paid back to the person, from whom, it is recovered also came up for consideration before the Hon'ble Apex Court in the 2nd cited judgment cited by the learned counsel for the petitioner, where the learned counsel for the petitioner relied upon paragraph Nos.60 and 61. The said paragraphs are reproduced hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>

60. Learned counsel also submitted that prior to the interim order passed by this Court on



07.04.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some installments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.

61. In the result, the appeals are allowed in part; the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellant teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR 22 would apply to the appellant teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of Secondary Schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of a copy of this judgment."

11. Since the very recovery from the retired employee itself was declared to be impermissible in law, the amount recovered from the petitioner pursuant to the impugned order certainly cannot be permitted to be withheld by the respondents, as the said money should go back to the retired employee i.e., the petitioner herein. Therefore, applying the ratio of the aforesaid two judgments of the Hon'ble Apex Court, this Court is of the view that the impugned order is liable to be quashed and the money, if any, recovered pursuant to the impugned order shall be paid back to the petitioner.

12. In the result,

(i) the impugned order, insofar as the order it relates to the petitioner is concerned, is quashed;

(ii) If any recovery is made pursuant to the impugned order, the same shall be paid back to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

13. With this direction, the writ petition is allowed insofar as the petitioner is concerned. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To
The District Treasury Officer,
Office of the District Treasury
Pudukottai.

+1cc to P.GANAPATHI SUBRAMANIAN Advocate in SR. No.4332

+1cc to Special Government Pleader in SR. NO.4496

RR

JS/JM/05.02.2017/5P 4C

W.P. (MD) No.19424 of 2013

25.01.2017