

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.08.2018
DELIVERED ON : 27.08.2018

CORAM:

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.7326 of 2018

Dr.Mahboob Alam I.P.S. (Retd.) .. Petitioner

Vs.

1. The Registrar
Central Administrative Tribunal (Madras Bench)
High Court Buildings, Chennai.
2. The Principal Accountant General (A&E)
Tamil Nadu 361, Anna Salai
Chennai - 600 018. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records and quash the impugned order dated 21.12.2016 passed in O.A.No.288 of 2015 by the first respondent and consequently direct the second respondent to release the deducted sum of Rs.5,69,647/- taken from the petitioner's GPF Account (AISPF Account No.AIS/764) with interest at the rate of 12% p.a. for the unauthorized deduction of Rs.5,69,647/- under GPF Account (AISPF Account No.AIS/764) from the date of retirement till the date of realization.

For Petitioner : Mr.M.L.Ganesh

For Respondents : Mr.K.S.Saravanan
for Mr.V.Vijay Shankar
for 2nd respondent

ORDER

Mrs.V.K.Tahilramani, Chief Justice

The petitioner has filed this writ petition against the order of the Central Administrative Tribunal, Madras Bench, dated 21.12.2016 passed in O.A.No.288 of 2015, dismissing the Original Application preferred by the petitioner.

2. In the Original Application, the petitioner had prayed for quashing the letter of the second respondent dated 18.9.2014, whereby he was informed that the authorization for the drawal of Rs.23,13,175/- towards final payment in the All India Service Provident Fund (AISPF) Account had been issued. The petitioner had further prayed for direction to the second respondent to pay interest at the rate of 12% per annum for the unauthorized deduction of Rs.5,69,647/- under AISPF Account.

3. The above prayer had been made by the petitioner before the Tribunal, as, according to the petitioner, he was entitled to drawal of Rs.29,58,100/- from the AISPF Account, whereas the second respondent by letter dated 18.9.2014 informed him that there was authorization to drawal of Rs.23,13,175/-.

4. The learned counsel for the petitioner submitted that there was no amount due from the petitioner and the same is clear from the letter dated 2.12.2013 of the second respondent, whereby the petitioner was informed that there are no missing credits in his AISPF Account and nothing is outstanding against Long Term Advances account as on that date. He submitted that despite this letter, the second respondent has arbitrarily deducted Rs.5,69,647/- from his AISPF Account.

5. The learned counsel for the petitioner reiterated that the second respondent had already confirmed vide letter dated 2.12.2013 that there were no missing credits in his AISPF Account and there is nothing outstanding against Long Term Advances account and further submitted that he had sufficient credit balance at the relevant point of time in his account and hence, there was absolutely no necessity for postponing the deduction of interest from and out of his final payment of the General Provident Fund.

6. The contention of the petitioner before the Tribunal as well as before us is that had the official concerned of the second respondent deducted the advances from his salary every month, the accumulated interest component of Rs.5,69,647/- would not have arisen and on account of dereliction of duty on the part of the official concerned, the petitioner is put to irreparable loss.

7. It was further contended that as per Rule 11 of the All India Services Provident Fund Rules, 1955, the second respondent should have deducted the said advance amount from his salary within the stipulated time.

8. The learned counsel for the second respondent submitted that as the petitioner was to retire on superannuation on 31.5.2014, as is the practice, his AISPF Account was reviewed

for missing credits and outstanding against Long Term Advances obtained by him and at that time they found that there were no missing credits from his subscription and outstandings against Long Term Advances and, hence, by communication dated 2.12.2013, he was informed that there are no missing credits in the AISPF Account and there is nothing outstanding against Long Term Advances Account. The learned counsel for the second respondent submitted that thereafter a review of the account of the petitioner was made and it was found that three temporary advances which were drawn by the petitioner had not been accounted for. Hence, the petitioner was intimated orally about this fact through his representative. He was also informed that the same would be deducted from his inflated closing balance of Rs.29,58,100/- as on 31.8.2014 and the correct amount now available to him is Rs.23,13,175/-, which was communicated to the petitioner by letter dated 18.9.2014.

9. We would like to state here that it is an admitted fact that the petitioner had taken three advances, i.e., Rs.22,750/- in September, 1989; Rs.34,700/- in September, 1991 and Rs.17,960/- in July, 1995.

10. From the contention of the learned counsel for the petitioner before the Tribunal and before us, it is clear that his case is HAD the official concerned deducted the advances from his salary, the interest component of Rs.5,69,647/- would not have arisen. This contention, which is also raised in paragraph (9) of his affidavit, shows that the amount was not deducted by the second respondent from his salary every month. We may also state that nothing was brought to our notice to show that the amounts relating to advance were deducted from the salary of the petitioner every month.

11. We have also noticed that as per Rule 34(2) of the All India Services Provident Fund Rules, 1955, the subscriber has to satisfy himself as to the correctness of the statement and bring errors, if any, to the notice of the Senior Accounts Officer within three months and this Rule has also been clearly printed in the Account Slip as "Note 1" in the Annual Statement of the account which is furnished to the subscriber every year. However, at no point of time, the petitioner came forward to state that the amount towards advances has not been deducted every month from his salary and deductions should be made.

12. As far as the contention of the petitioner that on account of deduction of Rs.5,69,647/- he is put to irreparable loss, we may state that this amount is the interest component on the amount which was not deducted towards the three advances taken by him. What has been deducted is only the interest paid for the unaccounted debit which would belong only to the

Government and is not the interest towards any subscription made by the petitioner. General Provident Fund comes under the Public Account of India and it is like a bank account, i.e., whenever a person deposits an amount, it is credited and the withdrawal is debited. In the case of the petitioner's account, his three withdrawals from the account had been omitted to be deducted and on the other hand interest was paid on this amount which was not deducted, which has led to the inflated balance. Thus, in the case of the petitioner, not only were the advances not deducted, but interest was also credited on the amount, which ought to have been deducted, but was not deducted.

13. The learned counsel for the petitioner submitted that once the amount has been credited to his account, the authority should not be allowed to deduct the same. In support of this contention, he has placed reliance on a decision of the Supreme Court in *State of Punjab v. Rafiq Masih*, (2014) 8 SCC 883. The facts in the case of *Rafiq Masih*, supra, and the facts in the present case being entirely different, the decision in the case of *Rafiq Masih*, supra, would not help the petitioner in any manner.

14. As stated earlier, the amount which is deducted is only the interest which had been credited to the account of the petitioner without taking into account that the three advances had to be deducted. This was the amount which had accumulated by way of interest on the amounts of three advances, which advance amounts had to be deducted. It is only this excess amount of interest which is, in fact, the amount pertaining to the Government that has been adjusted and it would not be correct to say that the petitioner had suffered any loss on that account and that he was put to any financial loss on account of the action of the second respondent.

15. As stated earlier, not only were the three advances not deducted from his account, but interest was credited for these advances all these years, which resulted in interest being paid to the tune of Rs.5,69,515/-. The petitioner cannot have any claim on this amount. Thus, it is clear that it is only interest amount which has wrongly been credited to the provident fund account of the petitioner, which has been deducted at the time of final settlement. The petitioner is not entitled to the amount paid into his account by way of interest on the three advances which were not deducted from his account.

16. We may also state that the claim of the petitioner that he has been put to irreparable loss is not only untenable, but such claim should not have been made by the petitioner, who is a senior official retiring from an All India Service.

17. We, therefore, do not find any error in the action of the second respondent in deducting the said amount from the AISPF Account of the petitioner.

18. The Tribunal has considered all the aspects and thereafter dismissed the Original Application. We do not find any illegality or infirmity in the order passed by the Tribunal.

In the result, this writ petition is dismissed. No costs. Consequently, W.M.P.No.9099 of 2018 is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The Registrar
Central Administrative Tribunal (Madras Bench)
High Court Buildings, Chennai.
2. The Principal Accountant General (A&E)
Tamil Nadu 361, Anna Salai
Chennai - 600 018.

+lcc to Mr.V.Vijay Shankar Advocate, S.R.No. 58772
+lcc to Mr.M.L.Ganesh Advocate, S.R.No. 58620

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W.P.No.7326 of 2018

GN(03/09/2018)

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