

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2018

Coram:

The Honourable Mr.Justice S.M. Subramaniam

W.P.No.7362 of 2018
and
W.M.P.No.9149 of 2018

C. Arumugam

...Petitioner

Versus

1. The Treasury Officer,
Sub Treasury,
Collectorate Buildings,
Erode - 638 011.

2. The Joint Director of Collegiate Education,
Race Course Road,
Coimbatore - 641 018.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of both the impugned orders in Na.Ka.24/2017/F1 dated 07.02.2018 issued by the first respondent to the petitioner and quash the same.

For petitioner : Mr.Naveen Kumar Murthi
For Respondents : Mr.V.Kadhirvelu,
Special Government Pleader

सत्यमेव जयते
O R D E R

Heard Mr.Naveen Kumar Murthi, the learned counsel appearing for the petitioner and Mr.V.Kathirvelu, the learned Special Government Pleader appearing for the respondents.

2.1. The order of recovery dated 07.02.2018 issued by the first respondent to the petitioner to recover the excess payment of pension given to the petitioner is under challenge in this Writ Petition.

2.2. The Writ Petitioner is a State pensioner and was employed as a Librarian in Chickaia Naicker College, Erode, and

retired from service in the year 1987. The pension was fixed based on the orders and payment Rules enforced and accordingly, the Writ Petitioner is receiving the monthly pension. While so, the first respondent issued the impugned order of recovery in proceeding dated 07.02.2018, stating that an excess payment of pension was made to the writ petitioner and based on the Audit Report, Notice for recovery of Rs.7,75,153/- (Seven Lakhs Seventy Five Thousand One Hundred and Sixty Three Rupees) is issued.

3. First of all, no show cause notice or opportunity was provided to the petitioner to defend his case. Thus, the impugned order is in a violation of the principles of natural justice. Secondly, the writ petitioner is aged about 89 years and he has to lead his remaining life and to meet his monthly expenses only from his less monthly pension. In the event of imposing a huge amount of recovery, the livelihood of this writ petitioner at this age would be affected. Therefore, the recovery enforced cannot be implemented. This apart, eventhough, the same cannot be recovered at this point of time. However, the fixation of pension can be granted in accordance with Government order and Pay Rules in force. In this view of the matter and the fixation of payment on Rules, recovery cannot be effected.

4. The Honourable Supreme Court of India in the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) & Others reported in (2015) 4 SCC 334 held that recovery of excess payment of amount from the pensioner are impermissible and the recovery cannot be imposed, if there is no misrepresentation or otherwise on the behalf of the petitioner in the present writ petition, and there was no undertaking in this regard. Such being the factum of the case, a recovery order issued by the respondent is in violation of legal principle settled by the Honourable Apex Court.

5. Accordingly, the impugned order of recovery issued by the first respondent in Na.Ka.24/2017/F1 dated 07.02.2018 to the petitioner is hereby quashed and this Writ Petition shall stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

mrr

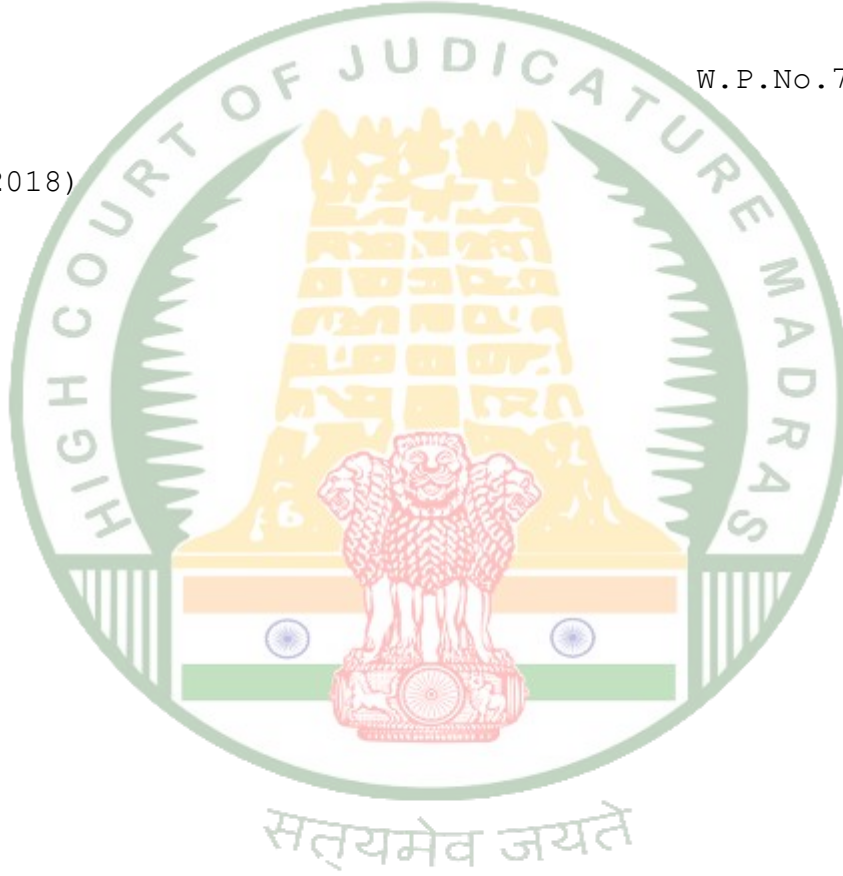
To

1. The Treasury Officer,
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2. The Joint Director of Collegiate Education,
Race Course Road,
Coimbatore - 641 018.

+lcc to Mr.Naveen Kumar Murali, Advocate SR.No.25252

W.P.No.7362 of 2018

KAN(CO)
GN(27/04/2018)



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