IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2018
CORAM :
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24630 of 2004

R.Jayalakshmipathi ... Petitioner

vs.

1. The Deputy Director of Agriculture (P&M),
Vellore-2.

2. The Treasury Officer,
Sub-Treasury, Kancheepuram.

3. The Director of Pension,
Chennai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order dated 13.05.2004 in Na.Ka.No.879/2004/A2 passed by the second respondent and to quash the same and further direct the respondents to return the amount of Rs.44,000/-or any other amount which has been illegally recovered from the family pension of the petitioner herein with interest at 24% per annum.

For Petitioner : M/s.N.Fidelia

For Respondents: Mr. Akhil Akbar Ali
Government Advocate

O R D E R

The order of recovery dated 13.05.2004 issued by the 2nd respondent is under challenge in the present writ petition.

2. The husband of the writ petitioner Shri.S.P.Lakshmipathy was employed as Deputy Director of Agriculture was not allowed to retire from the service on 30.06.1995. Subsequently, the husband of the writ petitioner died on 14.06.2002. The writ petitioner submitted an application for settlement of the pensionary benefits and for family pension. The family pension and the pensionary benefits as applicable were settled in favour of the writ petitioner. Surprisingly, during the year 2004, the order impugned has been issued by the Assistant Treasury Officer, Kancheepuram stating that the amount received by the husband of the writ petitioner from 01.07.1995 to 31.05.1998 had not been deducted at the time of settling the pensionary benefits to the writ petitioner. Thus, the recovery is imposed.

Challenging the said recovery order the present writ petition has been filed.

3. The learned Government Advocate appearing on behalf of the respondent opposed the contentions by stating that the Competent Authorities are empowered to deduct the excess amount already paid in favour of the husband of the writ petitioner. The excess amount was sought to be recovered based on the audit objections and therefore, there is no infirmity as such in respect of the impugned order.

4. This Court is of an opinion that the respondents are unable to produce any undertaking or otherwise obtained from the writ petitioner at the time of settlement of Pensionary benefits and the arrears of family pension. The fact remains that the writ petitioner was sanctioned with the pensionary benefits as well as the arrears of family pension by the respondents. Thus, the recovery cannot be imposed based on the audit objection. More specifically, when the writ petitioner is a family pensioner.

5. This apart, no show-cause notice or opportunity was provided to the writ petitioner before issuing the impugned order of recovery. Any order affecting the rights of the employee or the family pensioner, the same cannot be issued without providing an opportunity to the aggrieved person. Thus, the impugned order is in violation of the principles of the Natural Justice.

6. It is pertinent to note that the Hon'ble Supreme Court of India settled the legal principles in the matter of recovery in the case of State Of Punjab & Ors vs Rafiq Masih reported in 2015 4 SCC 334, the relevant paragraph No.18 is extracted hereunder:-

> " 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."

7. As per the ratio laid down in the Apex Court, the excess payment if any paid to the retired employee or the family pensioners cannot be recovered by the respondents. This being the legal principles, this Court is of an opinion that the present writ petition deserves to be considered. Accordingly, the following orders are passed:-

1. The order impugned passed by the 2nd respondent in Na.Ka..No.879/2004/A2 dated 13.05.2004 stands quashed.
2. The respondents are directed to repay the amount of Rs.44,000 already recovered from the writ petitioner pursuant to the impugned order dated 13.05.2004 within a period of 12 weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition stands allowed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pkn
To

1.The Deputy Director of Agriculture (P&M),
Vellore-2.

2.The Treasury Officer,
Sub-Treasury, Kancheepuram.

3.The Director of Pension, Chennai.

+1cc to Mr.N.Fidelia, Advocate, S.R.No.83500

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KJI(CO)
rrs 04/01/2019