IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.17295 of 2015
and M.P.Nos.1 to 3 of 2015

T.S.Somasundram ...Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Finance (Pension) Department,
Fort St.George,
Chennai 600 009

2.The Director,
Treasury & Accounts Department,
Chennai-15

3. The Additional Treasury Officer,
Office of the Collectorate,
Salem-1 ... Respondents

PRAYER

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in his Proceeding No.Se.Mu.Tha.Ka.No.1302/ F1/2015 dated 24.02.2015 and quash the same and consequently direct the second and third respondents herein to pay monthly pension without any reduction.

For Petitioner : Mr.Kandan Doraisamy

For Respondents : M/s.A.Sri Jayanthi,
Special Government Pleader

O R D E R

The order of recovery issued by the third respondent in respect of excess payment to the writ petitioner is under challenge in this writ petition.

2. The writ petitioner was employed as a Head Clerk in Commercial Tax Department and retired from service on 31.07.1993 on attaining the age of superannuation. The monthly pension was fixed to the writ petition in accordance with the Government Orders in force. However, based on an audit objection, the impugned recovery order has been issued in March 2015 stating that excess payment was made to the writ petitioner.

3. The learned counsel appearing on behalf of the writ petitioner states that no notice or opportunity was provided to the writ petitioner even to defend his case in accordance with the procedures contemplated under the pension rules. This apart, the writ petitioner was allowed to retire from service on 31.07.1993 and the recovery of excess payment is made after 23 years from the date of retirement of the writ petitioner.

4. The learned Special Government Pleader appearing for the respondents states that the excess amount already paid to the writ petitioner is sought to be recovered through the impugned recovery order. Thus, there is no infirmity in respect of the recovery order. This apart, the excess payment was found during the course of audit and therefore, the authorities competent are liable to recover the same from the writ petitioner.

5. This Court is of an opinion that the writ petitioner is a pensioner and was allowed to retire from service in the year 1993. The impugned recovery order has been issued after a lapse of about 23 years from the date of his retirement. There was no allegation of misrepresentation or otherwise on the part of the writ petitioner in respect of fixation of pay or pension in accordance with the Government Orders in force. In the absence of any such misrepresentation even if excess payment was made to the writ petitioner, the same cannot be recovered after many years. The authorities competent are entitled to correct the mistakes, if any. Thus, if the fixation is wrong in respect of the writ petitioner, then the respondents are at liberty to correct the same in accordance with the Government Orders in force. However, the excess payment already made cannot be recovered in view of the legal principles settled by the Hon'ble Supreme Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, the relevant paragraph is extracted hereunder.

> "12. 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."

6. The Apex Court of India in unambiguous terms reiterated that the recovery of excess payment is impermissible, more so, after a lapse of many years. In the present case on hand, there is no misrepresentation on the part of the writ petitioner.

7. Thus, the excess payment already made to the writ petitioner cannot be recovered and accordingly, the impugned order passed by the respondent in proceeding No.Se.Mu.Tha.Ka.No.1302/ F1/2015 dated 24.02.2015 is quashed. If any amount has already been recovered, the respondents are directed to reimburse the recovered amount to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this Order.

8. With the above observations, the writ petition stands allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Secretary,
The Government of Tamil Nadu,
Finance (Pension) Department,
Fort St.George,
Chennai 600 009

2.The Director,
Treasury & Accounts Department,
Chennai-15

3. The Additional Treasury Officer,
Office of the Collectorate,
Salem-1

+1cc to the Special Government Pleader, S.R.No. 35336

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EV(CO)
TR(14/06/2018)