

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.1442 of 2018 and CMP.No.11421 of 2018

1. The District Collector,
Krishnagiri District.
 2. The Joint Commissioner of
Revenue Administration,
Chepauk, Chennai-5.
 3. The Principal Secretary to Government,
Finance (P.C.) Department,
Fort St. George, Chennai-9. Appellants
- Vs
- V.Ananthakrishnan Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 24.8.2017 made in W.P.No.6114 of 2015 by a learned Single Judge.

Prayer: W.P.No.6114 of 2015:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue of Certiorified Mandamus to Calling for the records relating to the Proceedings of the 2nd Respondent issued in Letter No. Va.Nee. 3(5)/35819/2013, dated 04.09.2013 and the consequential proceedings of the 1st Respondent in Na.Ka.No. 12498/2013/A1, dated 11.03.2014 and in Na.Ka.No. 12498/2013/A1, dated 14.07.2014 and quash the same and to direct the Respondents to restore the Scale of Pay of the petitioner as fixed in the Revised Scale of Pay, as on 12.12.2007, in the category of Tahsildar with all attendant and consequential benefits and to send the Revised Pension proposal with reference to the last drawn pay arising out of the fixation of pay as on 12.12.2007 in the revised scale of pay and to pay the arrears thereof and further direct the respondent to refund the recovery amount of Rs1,33,451/- remitted by the petitioner in the treasury on 20.08.2014.

For Appellants	:: Mr.R.Govindasamy, Spl. Govt. Pleader
For Respondent	:: Mr.R.Balasubramanian

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 24.8.2017 made in W.P.No.6114 of 2015 by a learned Single Judge.

2. In the said Writ Petition, the order of recovery issued by the second respondent in Proceedings dated 4.9.2013 and the consequential proceedings of the first respondent dated 11.3.2014 and 14.7.2014 were under challenge. The said Writ Petition was partly allowed by the learned Single Judge by order dated 24.8.2017. Aggrieved over the same, the present Writ Appeal has been filed by the respondents therein.

3. Heard the submissions made on either side. We have also perused the materials available on record carefully.

4. The case of the writ petitioner/1st respondent is that he was initially appointed as Junior Assistant on 08.03.1982 and thereafter, promoted to the level of Tahsildar with effect from 1.9.2007 and further promoted to the post of Deputy Collector by way of transfer of service with effect from 22.9.2011 and retired from service on 30.6.2013 on attaining the age of superannuation. While so, revision of pay as well as the pensionary benefits were calculated in accordance with the Government Orders to the writ petitioner. It is the department which carried out the revision of pay and there was no misrepresentation on his part in relation to the re-fixation and revision of pay. Thus, the pay and pension fixed and disbursed to the writ petitioner was in accordance with the Government Orders in force at the relevant point of time. However, it appears that based on an audit objection, an order of recovery was issued to the writ petitioner after his retirement, even without giving any show cause notice, which is in violation of the principles of natural justice and further no recovery can be imposed after the retirement of an employee. The same was objected to by the respondents therein. While so, the learned Single Judge in his order dated 24.8.2017 has held thus :

''6. This Court is of the opinion that the erroneous fixation can be corrected at any point of time if an objection is raised by the audit officers. Thus, the error, if any, in re-fixation of pay shall be corrected by the competent authorities, but the recovery imposed on the writ petitioner cannot be sustained. Accordingly, the writ petition stands partly allowed in respect

of the recovery imposed and the amount recovered from the writ petitioner is directed to be reimbursed within a period of four weeks from the date of receipt of a copy of this order and in respect of the re-fixation, it is left open to the competent authorities to correct the same in accordance with the rules and as per the Government Orders in force.'

Aggrieved over the same, the present Writ Appeal has been preferred by the respondents therein.

5. Learned Special Government Pleader appearing for the appellants submitted that the writ petitioner is a Grade-I Officer and therefore, he was aware of the wrong fixation and the fixation done in this regard requires to be corrected for all future purposes. Otherwise, it will be loss of money to the State exchequer. But the learned Single Judge has held that the erroneous fixation can be corrected at any point of time if an objection is raised by the audit officers. Thus, the error, if any, in re-fixation of pay shall be corrected by the competent authorities, but the recovery imposed on the writ petitioner cannot be sustained. Therefore, the said order has to be set aside.

6. The learned Special Government Pleader laying emphasis on White Washer's case (State of Punjab and others vs. Rafiq Masih (White Washer) etc in CA.No.11527/2014 (arising out of SLP © No.11684./2012) submitted that the 1st respondent/writ petitioner is a Retired Class I Officer, neither a Group 'C' or Group 'D' employee. The foremost aspect with regard to the hardship faced by the employees in the case of ordering to recover excess payment is that it will affect their living condition, due to the fact that the amount of salary or pension being paid will be reduced. Therefore, the State has taken a view with regard to Group 'C' and Group 'D' employees granting certain exemptions and issued G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018. But, here in the case on hand, the 1st respondent has retired as a Class I Officer and he cannot face any such hardship as faced by the Group 'C' or Group 'D' employees.

7. There is no doubt that as pointed out by the learned Special Government Pleader for the appellants, the hardship faced by Class I or Group B employee who served as an officer in that capacity cannot be in a position immediately after retirement as that of Group 'C' or 'D' employees, especially, when it is a case of Government Servant, who has been provided with a social security like pensionary benefits etc. In that view of the matter, the order of the learned Single Judge not ordering to recover the excess amount paid to the 1st respondent will not hold good.

8. The said contention has been agitated by the learned Counsel for the 1st respondent stating that the Apex Court has held in White Washer Case that a period, within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, an account of wrongful payment made to an employee as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

9. In our considered opinion, the same cannot be applicable to the 1st respondent, who retired as a Class I Officer. In this regard, it is relevant to extract paragraph 18 of the decision of the Apex Court in State of Punjab and others v. Rafiq Masih (White Washer) & others case, (2015) 4 SCC 334 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 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."

A perusal of the aforesaid decision reveals that recovery from retired employee or employee who are due to retire within one year from the order of recovery cannot be recovered and at the same time, it has to be noted that the same cannot be applicable to Class I Officer. It is also held that it would be open for the employer to recover the same.

10. In the case on hand, the proceedings for recovery have been initiated immediately after the retirement of the 1st respondent during 2013, and moreover, the 1st respondent has retired as a Class I Officer. Further, within two years from wrongfully fixing the pay of the 1st respondent, based on an audit objection, recovery proceedings have been initiated by the employer. While so, we are of the view that the hardship being faced by him due to the recovery of excess amount already paid to him, from his pension, is less than that of the Group 'C' or Group 'D' employees. Anyhow, taking a lenient view, we hereby direct the appellants to recover the excess amount paid to the 1st respondent in six monthly instalments within a period of two years.

11. With the above observation and direction, the Writ Appeal stands allowed by setting aside the order of the learned Single Judge dated 24.08.2017. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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To,

1.The District collector,
Krishnagiri.

2.The Joint commissioner,
Revenue administration,
Chepauk Chennai.5

3.The Principal Secretary To Government,
Finance (pc) Department,
Fort.St.George,
Chennai.9

+1cc to Mr. R.Balasubramanian, Advocate SR.No. 61594

W.A.No.1442/2018

ASK(28/09/2018)