

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-04-2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8558 of 2018

And

W.M.P.No.10493 of 2018

J.Sankaran

... Petitioner

Vs.

1.The Secretary to the Government of Tamil Nadu,
Finance (Pay Cell Department),
Fort St. George,
Chennai-600 009.

2.The Joint Secretary to Government of Tamil Nadu,
Finance (Pay Cell Department),
Fort St. George,
Chennai-600 009.

3.The District Collector,
Vellore District,
Office of the Collectorate,
Vellore.

4.The Accounts Branch Officer,
Office of the Principal Accountant General A&E,
Authorisation of Revision of Pension/Gratuity/
Commutation,
361, Anna Salai,
Chennai-600 018.

5.The Personal Assistant General to the Collector,
Vellore District,
Office of the Collectorate.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fifth respondent passed in his proceedings No.Na.Ka. E2/1699/2017 dated 8.1.2018, recovering the petitioner salary and quash the same as illegal, unlawful and arbitrary, consequently direct the fourth respondent to pay the petitioner's pension amount of Rs.5,97,487/- to the petitioner.

For Petitioner : Mr.S.Venkatesh

For Respondents-1,2,3&5: Mr.V.Kadhirvelu,
Special Government Pleader.

For Respondent-4 : Mr.V.Vijayshankar

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O R D E R

The order of recovery issued by the fifth respondent in proceedings dated 8.1.2018 is under challenge in this writ petition.

2. The grievances of the writ petitioner is that pursuant to the order dated 23.8.2017, issued by the fourth respondent, the fifth respondent issued consequential recovery order in proceedings dated 8.1.2018 effecting recovery.

3. The learned counsel, appearing on behalf of the writ petitioner, states that the order of recovery has been issued without any show cause notice and opportunity to the writ petitioner and therefore, impugned order is in violation of principles of natural justice.

Any order affecting the service right of an employee, cannot be passed without providing opportunity to the employee concerned. Admittedly, the present impugned order has been issued without any show cause notice and therefore, liable to be set aside and in view of this ground, the writ petitioner's right deserves to be considered.

4. Accordingly, the order passed by the fifth respondent in proceedings No.Na.Ka.E2/1699/2017 dated 8.1.2018 is set aside in respect of recovery. However, it is made clear that with reference to the order passed in WP No.8557 of 2018, the correct scale of pay, as applicable to the writ petitioner, is to be fixed and accordingly, the revised pay and pension also to be granted to the writ petitioner. In respect of excess payment, if

any, made already to the writ petitioner, the same cannot be recovered. In this regard, this Court is of an opinion that the writ petitioner is a retired Government employee and excess payment, if any, made in the absence of any misrepresentation are settled by the Hon'ble Supreme Court of India in the case of State of Punjab v. Rafiq Masih and Others [(2015) 4 SCC 334] and the relevant paragraph-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 hereinabove, 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.

5. As per paragraph 18(i) excess payment, if any, made to the employees, cannot be recovered, more specifically, from the retired employees in the present case on hand, there is no misrepresentation on the part of the writ petitioner. Therefore,

the order of recovery is set aside and in respect of re-fixation, the respondents are at liberty to do so by issuing the show cause notice and after receiving the explanations from the writ petitioner, take a decision and pass final orders on merits and in accordance with law.

6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Secretary to the Government of Tamil Nadu,
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+1 cc to Mr.S.Ventakesh Advocate sr 27180

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