

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.06.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17126 of 2015
and
M.P.Nos.1 & 2 of 2015

V.Murugesan

.. Petitioner

vs

The Assistant Treasury Officer
Nannilam
Tiruvarur District - 610 105.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order of Calculation and recovery dated 04.05.2015 and the Letter sent by the Respondent in Na.Ka.No. /2014 rp, 12-05-2015 and quash the same consequently direct the respondent to refund the attached amount along with interest with 12% of interest compounded annually.

For Petitioner : M/s.A.R.Nixon

For Respondent : M/s.A.Srijayanthi, Spl GP

O R D E R

The order of recovery issued by the respondent in proceedings dated 12.05.2015 is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was employed as Head Master in the Elementary School and retired from service on 31.10.1984 on attaining the age of superannuation. The pension as applicable has been fixed to the writ petitioner based on the Government orders in force. The subsequent revision of pension also was granted by the respondent in accordance with the rules. However, the impugned order of recovery has been issued based on the audit objections and without providing any opportunity to the writ petitioner.

3.The learned counsel for the petitioner further states that the re-fixation of pension was done to the writ petitioner based on the Government order issued in G.O.Ms.No.271 and the said G.O.Ms.No.271 was issued based on the orders of the Court. Thus, there is no irregularity in respect of the revision of pension granted to the writ petitioner. In any case, the impugned order of recovery has been issued without even issuing any show cause notice to the writ petitioner and the same is in violation of the principles of natural justice.

4.This Court is of an opinion that any order affecting the service rights of an employee or a retired employee has to be issued only after issuing a show cause notice and an opportunity to defend the case by the employee. In this view of the matter, the impugned order passed without notice is in violation of the principles of natural justice.

5.The writ petitioner is a pensioner and even if there is any excess payment made, then also the respondent cannot recover the excess amount after a lapse of many years. The misconduct if any occurred in the fixation of pay, the same can be corrected in accordance with the Government orders and the pay rules in force. Thus, it is made clear that misconduct if any in respect of the fixation of pension to the writ petitioner, the same may be corrected and the excess payment if any paid cannot be recovered from the writ petitioner. The legal principles settled by the Hon'ble Supreme Court of India in the case of State of Punjab and Others vs. Rafiq Masih (White Washer) and Others {2015 (4) SCC 334}, issued guidelines in respect of recovery and the relevant paragraph 18 is extracted as under:-

"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."

6.The Apex Court of India in its unambiguous terms, expressed that excess payment if at all paid to the retired employees cannot be recovered and the errors fixation alone can be corrected. This being the principles laid down in the present writ petition deserves to be considered. Accordingly, the impugned order passed by the Respondent in Na.Ka.No. /2014 rp, dated 12-05-2015 is quashed.

7.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 V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To
The Assistant Treasury Officer,
Nannilam,
Tiruvavarur District - 610 105.

+1cc to Mr.A.R.Nixon, Advocate Sr.36939
+1cc to the Government Pleader Sr.37931

W.P.No.17126 of 2015

srg 25/06/2018