IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

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THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.20790 of 2008 and

M.P.No.01 of 2008

D. Rajamani .. Petitioner

Versus

1. The Principal Accountant General (A&E)
   361, Anna Salai, Chennai-600 018.

2. The Treasury Officer,
   Kancheepuram.

3. The Branch Manager,
   Indian Bank, Madurantakam. .. Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records pertaining to the communication dated 31.05.2008 sent by third respondent herein to the petitioner herein directing the recovery of excess payment of pension of Rs.75,176 and quash the same.

For Petitioner : Mr.G. Saravanan

For Respondent - 1 : Mr. V.Vijay Shankar
For Respondent - 2 : Mr.R.Selvam
(Government Advocate)

For Respondent - 3 :T. Sundarajan

ORDER

The petitioner has filed the writ petition to issue a writ of certiorari calling for the records pertaining to the communication dated 31.05.2008 sent by the third respondent herein to the petitioner herein directing the recovery of excess payment of pension of Rs.75,176/- and quash the same.

2.The petitioner was a senior citizen and she was retired from the post of Village Health Nurse, Primary Health Centre, Polambakkam Village & Post, Kancheepuram District - 603 309 and she was receiving the pension from the respondents by payment order No.C32635/PH. (pension case No.R-208-C/RTD/97-98). The petitioner has rendered his services in the office of the Deputy Director of Health Services, Kancheepuram district and while attaining super annuation, he was receiving the pension monthly, through the savings Bank Account Number. 507954372 of the Indian Bank,Madurantakam / third respondent herein.

3. While this being the case, the petitioner received the communication from the first respondent dated 11.12.2006 vide reference No.P08/1/R110-1110/REV/2006/9742 regarding the authorisation of revised rates of pension with effect from 01.03.1998 through the second respondent's covering letter dated 26.12.2008 vide reference Letter Dis.No.25699/25700/06/G2/Dt.12/06 regarding the authorisation of revised rates of pension and commutation of pension due to the petitioner with effect from 01.03.1998.

4. Since, she has received the authorized revised rates of pension with effect from 01.03.1998 he contacted the third respondent in may 2008 regarding the payment of arrears of pension due as per the revised rate of pension with effect from 01.03.1998. The third respondent has issued the communication dated 31.05.2008 informing that as per A.G. Office, Chennai, Pension Revision Order No. 1110/2006-07/9742 dated 11.12.2006, that they had calculated the pension arrears payment due to the petitioner with effect from 01.03.1998 till 31.05.2008 and she has been paid excess pension amount of Rs.75,176/-(Rupees Seventy Five Thousands one Hundred and Seventy Six only) and the same should be recovered from the petitioner from the pension payable from June 2008 onwards.

5. The petitioner would further contend that she was not served with any order regarding the alleged excess payment of pension either from the first respondent or from the second respondent and the third respondent has no jurisdiction to pass any order. Hence, the impugned order dated 31.05.2008 to recover the alleged excess payment of pension is liable to be quashed.

6. The third respondent has not credited the pension to the petitioner from June 2008 onwards and as directed by the first and second respondent herein. During the month of April and May 2008 the petitioner has received the monthly pension of Rs.6347/- as pension and the third respondent has started to deduct the amount from my pension as per the directions of second respondent dated 31.05.2008. Hence, the petitioner has approached this Court stating that the recovery from the

petitioner's pension made by the third respondent for the alleged excess amount payable of Rs.75,176/- is illegal. Since, no personal opportunity was given to the petitioner before passing the said impugned order. Therefore, the order has violated principles of law and sought for quashing of the said order dated 31.05.2008.

7. The first respondent namely the Principal Accountant General (A&E) has filed a counter stating that the pension for the petitioner was Rs.991/- per month and the pension commuted Rs.330/- per month and reduced pension of Rs.661/- payable from 01.03.1998 and commuted value of pension Rs.41,442 and retirement gratuity was Rs.57,008/-. The first respondent would further contend that as per Tamil Nadu Civil Pension (commutation) Rules 1944 the petitioner commuted 1/3rd of her pension and therefore the lump sum of commuted pension of Rs.41,422/- was authorized by the respondents.

8. Hence, the petitioner was eligible only for reduced pension of Rs.661/ from 01.03.1988 along with dearness relief for full pension and the original full pension has been restored to the petitioner on completion of 15 years from 01.03.1998 to 01.03.2012. As per the VIth pay commission G.O.Ms.No.162 Finance (P.C.) Department dated 13.04.1998 the respondent had issued order by letter nos. Pen8/I/r/110-1110/RN/06-07/9742 to 9750 dated 11.12.2006 and had revised the following amounts:

i. Revised pension amount as Rs.2650/-
ii. Revised Commuted pension Rs.883/-
iii. Revised Reduced pension Rs.1,767/- payable from 01.03.1988
iv. Revised commuted value of pension Rs.110835/-
v. Revised retirement gratuity Rs.87,450/-

7.Since, the petitioner has commuted 1/3rd pension the petitioner is entitled to reduced pension only for 15 years hence, the reduced pension was paid to her. The second respondent was paying the pension amount through the third respondent/bank and the second respondent had noted down the excess payment made to the petitioner and informed the same to the third respondent in letter dated 2/2008 and sought for recovery of Rs.75,176/- paid by the third respondent to the petitioner. The petitioner was very well aware that her pension was reduced since, he has given authorized lumpsum amount as commuted value of pension to the petitioner in the year 1998. The petitioner is not entitled to full pension and the due mistake was committed by the 2nd and 3rd respondent and the petitioner was paid pension without any deduction.

9. The third respondent has issued proceedings only to recover the excess amount paid to the petitioner and the petitioner ought to have returned the amount, since she is not eligible for the said payment of pension. Since, the petitioner taking undue advantage of the mistake has received the full pension. Hence, the amount of Rs.75,176/- should be recovered from the petitioner.

10. The Judgment of the Hon'ble Supreme Court of India in Civil Appeal No.11527 of 2004 arising out of SLP(c) No. 11684 of 2012 State of Punjab and others etc., vs Rafiq Masih (White Washer) etc., It has been observed that the Article 14 of the Constitution of India:

> "The logic of the action in the instant situation is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a Government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses."

Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it is open to the employer to recover the same.

11. However, if the payment is made for more than five years, even though it is not open to the employer to correct the mistake. Hence the act of recovery of amount from the employee is extremely iniquitious.

12. Based on the decisions recorded 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. Recover 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.

Recovery from a retired employee who are due to retire witihin one year are eligible to recover as per the order this Hon'ble Court.

13. Hence, from the above observations it is clear that recovery from a retired employee who are due to retire within one year are eligible to recover as per the order this Hon'ble Court and the excess pension paid to the petitioner from 1988 till 2008 cannot be recovered. The petitioner cannot found fault with and it is the respondents who have committed mistake deducting the amount payable to the petitioner.

14. In view of the above said Judgment of the Hon'ble Supreme Court this writ petition is allowed and the order the third respondent is set aside.No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To.

1. The Principal Accountant General (A&E)
361, Anna Salai, Chennai-600 018.

2. The Treasury Officer,
Kancheepuram.

3. The Branch Manager,
Indian Bank, Madurantakam.

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MG(CO)
SSM(18/12/2018)