

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13-06-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20525 of 2016

And

W.M.P.No.17605 of 2016

P.Yogam

... Petitioner

Versus

1.The Director of Treasury and Accounts,
Panagal Building,
Saidapet,
Chennai-15.

2.The Director of Pension,
D.M.S. Compound,
Chennai-600 006.

3.The Assistant Treasury Officer,
Sirkali,
Nagapattinam District.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records made in the impugned order of the third respondent in Na.Ka.No.843/2016/A2, dated 22.4.2016 and quash the same.

For Petitioner : Mr.R.Sreedharan

For Respondents : Mrs.A.Sri Jayanthi,
Special Government Pleader.

ORDER

The order of recovery issued by the third respondent in proceedings dated 22.4.2016 is under challenge in this writ petition.

2. The writ petitioner is a family pensioner drawing her family pension from the Assistant Treasury Office, Sirkali with

effect from 1.8.1976. The husband of the writ petitioner late Sri Ponnambalam was appointed as a Senior Secondary Grade Teacher and passed away, while he was in service, during the year 1976. Accordingly, family pension was fixed and paid to the writ petitioner as per the Government Orders and the Pension Rules in force. The writ petitioner is continuously receiving the family pension, while-so, an order of recovery was issued by the third respondent in proceedings dated 22.4.2016 based on the audit objection. The impugned order says that an excess payment of family pension was made in favour of the writ petitioner. Thus, the excess amount already paid to be recovered from monthly family pension of the writ petitioner.

3. Admittedly, no show cause notice or an opportunity was given to the writ petitioner before issuing the impugned order of recovery. Any order affecting the service rights of an employee, cannot be issued without providing opportunity. Thus, the impugned order is in violation of the principles of natural justice.

4. This apart, excess payment, if any, made as family pension, cannot be recovered after a lapse of many years. Corrections, if any, in the revision of family pension alone can be made. Thus, it is made clear that any error occurred in respect of fixation of family pension, the same may be recovered in accordance with the Government Orders and the Pay Rules in force. However, the excess payment, if any, paid, cannot be recovered in view of 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}, wherein in paragraph 18 of its judgment, held 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."

The Supreme Court in its order has categorically enumerated that the excess payment paid to the pensioners, cannot be recovered, even if it was erroneously paid.

5. In the present case on hand, there is no misrepresentation or otherwise on the part of the writ petitioner in respect of the family pension. This being the factum of the case, the present writ petition deserves consideration. Accordingly, the impugned order of recovery passed by the third respondent in proceedings Na.Ka.No.843/ 2016/A2, dated 22.4.2016 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn
To

1.The Director of Treasury and Accounts,
Panagal Building,
Saidapet,
Chennai-15.

2.The Director of Pension,
D.M.S. Compound,
Chennai-600 006.

3.The Assistant Treasury Officer,
Sirkali,
Nagapattinam District.

+lcc to Mr.R.Sreedharan, Advocate Sr.37562

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