

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.1660 of 2018

D.Sarojini

..Petitioner

-vs-

1. The Principal Secretary
Treasuries and Accounts Department
Nandanam
Chennai 600 035

2. The Assistant Treasury Officer
Sub Treasury
Poonamallee
Chennai 600 056

..Respondents

Prayer:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.947/A2/2017 dated 01.11.2017 and to quash the same and consequently directing the respondents to restore the original pension payable to the petitioner and continue to pay the same.

For Petitioner :: Mr.G.Sankaran

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader

सत्यमेव जयते
ORDER

The petitioner is an octogenarian aged about 83 years as on date. But surprisingly, the Assistant Treasury Officer, Sub Treasury, Poonamallee, the second respondent herein, awaking after 25 years of long slumber, finding fault with the excess pension made to the petitioner, who had served as a teacher (Additional Headmaster), has passed the impugned order directing the petitioner to remit the excess pension drawn by her to the Government account. Moreover, the impugned order, which can be termed as 'cryptic', does not mention whether any notice has been issued calling upon the petitioner to give her explanation whatsoever. In fact, the Apex Court in State of Punjab and others v. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 has

also held in paragraph 14(ii) that the recovery from retired employees or the employees who are due to retire within one year of the order of recovery, is impermissible in law. When this is the settled legal position, it is not known how the second respondent herein has issued an order not only without application of mind, but also without giving any opportunity whatsoever to the petitioner.

2. On the basis of the aforementioned judgment of the Apex Court, the learned Special Government Pleader for the respondents also submitted that the impugned order issued by the Assistant Treasury Officer, Sub Treasury, Poonamallee, the second respondent herein does not mention whether the petitioner was issued with any show cause notice calling for any explanation, therefore, it has to necessarily go. However, he prayed that the respondents may be given liberty to proceed against the petitioner.

3. This Court is not inclined to grant any such liberty to the respondents, because the issue has already been settled by the Apex Court in State of Punjab and others v. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, holding as follows:-

"14. 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.

15. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

4. In the light of the settled legal position, considering the factor that the petitioner had served as a teacher and retired from service with effect from 31.3.93 about 25 long years ago and even the impugned order does not show at what point of time she was paid with the excess pension, this writ petition stands allowed and the impugned order is set aside. Consequently, W.M.P.No.2067 of 2018 is also closed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

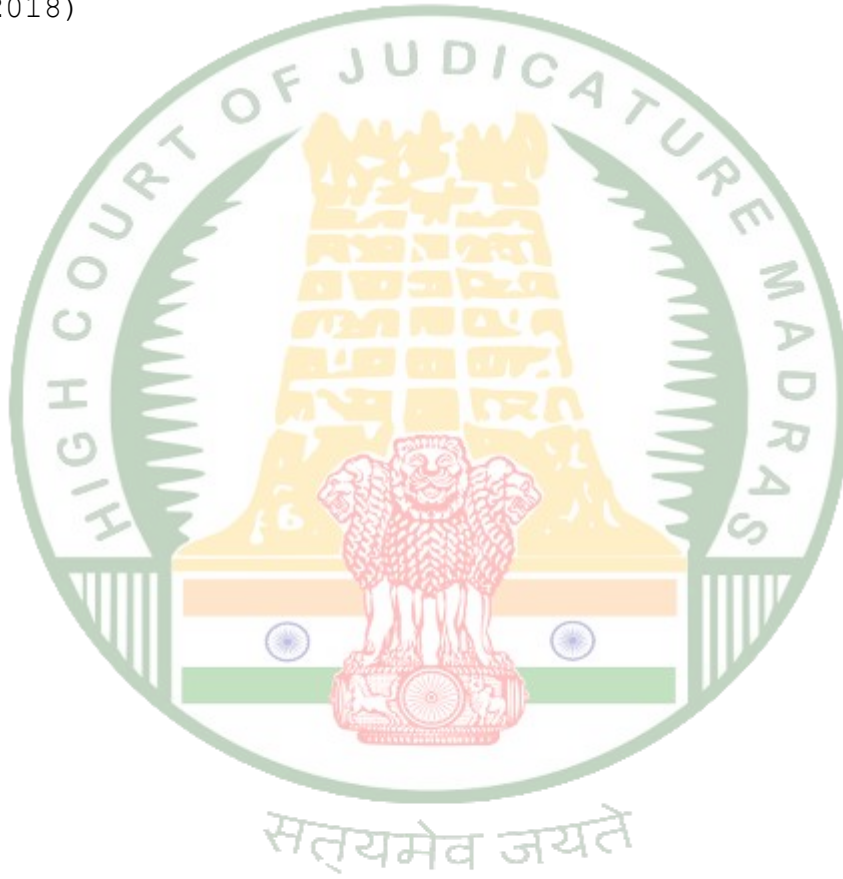
1. The Principal Secretary to Government
Treasuries and Accounts Department
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Chennai 600 035

2. The Assistant Treasury Officer
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+1 CC to Mr.G. Sankaran, Advocate sr 7099.
+1 CC to The Spl. Govt. Pleader sr 6647

W.P.No.1660 of 2018

MR (CO)
SP(16/02/2018)



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