IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.25771 of 2009 and
M.P.No.2 of 2009

K.V.Arunachalam ... Petitioner

Vs

1.The Accountant-General,
Teynampet, Chennai 600 018.

2.The Manager,
Indian Bank,
E.R.A.Puram Branch,
9, 1st Trust Link Street,
Mandaveli, Chennai 600 028.

3.The Pension Pay Officer,
E.V.K.Sampath Maaligai,
College Road, Chennai 600 006. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent issued in proceedings No. Nil dated 28.05.2009 and quash the same and restore the amount of family pension of the petitioner to the rate at basic of Rs.3,975/- and to pay the family pension accordingly.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.V.Vijay Shankar for R1

: No appearance for R2

: Mr.T.M.Pappiah,
Special Government Pleader for R3



O R D E R

Heard Mr.R.Saseetharan, learned counsel for the petitioner and Mr.V.Vijay Shankar, learned counsel appearing for the first respondent and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the third respondent.

2. The petitioner has approached this Court, seeking the following relief,

> "To issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent issued in proceedings No. Nil dated 28.05.2009 and quash the same and restore the amount of family pension of the petitioner to the rate at basic of Rs.3,975/- and to pay the family pension accordingly."

3. The case of the petitioner is as follows:-

The petitioner's wife was working as Tamil Pandit at Rani Meyyammai Higher Secondary School, Mandaveli, Chennai-28. She died on 22.04.2002, after retirement on 30.04.1998. Till her death, she was in receipt of pension from the Government of Tamil Nadu. After the death of the petitioner's wife, the petitioner was entitled to family pension and has been receiving the same every month from April 2002 onwards. The family pension was fixed at Rs.3,975/- with allowance and the petitioner receiving the same through the second respondent Bank.

4. While so, by order dated 28.05.2009, the second respondent informed the petitioner that he has been paid pension incorrectly at enhanced rate, as he was entitled to only a normal rate of pension at Rs.2,365/- from 02.04.2005 and therefore, the excess amount paid to him for the period from 02.04.2005 to 03.04.2009 had to be recovered. The excess payment was to the tune of Rs.1, 58,090/-.

5. The second respondent appears to have passed the order of recovery on 28.05.2009, without prior notice to the petitioner. However, the petitioner made an attempt to get further information as to the basis from which the excess payment is sought to be recovered and also on the basis of which, the pension was reduced. Unfortunately, the petitioner did not get any worthwhile information, inspite of he approaching the authority concerned in this regard. However, he was informed that the recovery order has been issued only on the basis of certain audit objections. The petitioner was also not informed about the basis of the audit objections as well. Therefore, the petitioner is constrained to move this Court, challenging the proceedings dated 28.05.2009 of the second respondent, refixing the pension as well as the recovery order.

6. Upon notice, learned counsel appearing for the first respondent, entered appearance and made his submissions. On behalf of the second respondent Bank, though initially the learned counsel's name was printed in the cause list, on the basis of his appearance, but, there was no representation on behalf of the second respondent for a number of occasions, when

the matter was called. Therefore, in the last occasion, the Registry was directed to print the name of the Bank and when the matter is called today for orders, still there is no representation. Therefore, this Court has left with no other option except to deal with the case on merits.

7. During the course of the arguments, the learned counsel for the petitioner has confined his arguments only on the recovery of the so called excess payment made to the petitioner. At the outset, he would submit that admittedly there is no notice issued prior to the impugned proceedings by the second respondent and therefore, on this ground alone, the impugned proceedings is liable to be interfered. He would further submit that the issue of recovery from pension payable to the Government employee has been dealt with by the Hon'ble Supreme Court of India, in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 Supreme Court Cases 334, wherein, the Hon'ble Supreme Court of India in paragraph 18 of the judgment, has held as follows:-

> "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."

8. The learned counsel for the petitioner would submit that the present writ petition is fully covered by the above ruling of the Hon'ble Supreme Court of India. He would submit that no recovery could be made from the employees belonging to Class III and Class IV Service (or Group C and Group D Service) and also such recovery cannot be made from retired employees.

9. In this case, as rightly contended by the learned counsel for the petitioner that no notice was issued prior to the order of recovery and refixation is concerned. Although the learned counsel has confined his argument only in regard to the recovery portion alone, however, this Court is of the view that even the refixation of pension without notice cannot be countenanced in law, since such action on the part of the second respondent violates the very basic principle of natural justice. When an order is passed resulting in adverse consequences, the same cannot be passed without due notice to the employee concerned. In this case, the refixation of pension as well as the recovery has been ordered without putting the petitioner on notice, disclosing the basis of such action. Even otherwise, as regards the recovery is concerned, the issue is squarely covered by the ratio laid down by the Hon'ble Supreme Court of India and therefore, such recovery cannot be effected, particularly, from the family pension payable to the petitioner.

10. Therefore, this Court is of the considered view that the impugned action by the second respondent for refixation of pension as well as the recovery, cannot stand the test of judicial scrutiny and therefore, the impugned order dated 28.05.2009, is hereby set aside. As regards the refixation of pension is concerned, it is always open to the second respondent or any other authority concerned to issue proper notice to the petitioner and after obtaining his explanation, any order could be passed, in accordance with law. But, as regards the recovery is concerned, since the matter is squarely covered by the ruling of the Hon'ble Supreme Court of India, as aforementioned, the same cannot be done under any circumstances.

11. In the light of the above, the writ petition is allowed. It is also made clear that any amount which is recovered by the second respondent from the family pension payable to the petitioner, has to be refunded to the petitioner. Such refund

shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Accountant-General,
Teynampet, Chennai 600 018.

2.The Pension Pay Officer,
E.V.K.Sampath Maaligai,
College Road, Chennai 600 006.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.8274

+1cc to the Government Pleader, S.R.No.9028

W.P.No.25771 of 2009

RRK(26/02/2018)