IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25391 of 2013
and
M.P.Nos. 1 and 2 of 2013

H.Ramakrishna Iyer
... Petitioner

-vs-

1.The Secretary to Government of India,
Ministry of Information and Broadcasting,
Shastri Bhavan,
New Delhi - 110 001.

2. The Pay and Accounts Officer (Pension-IRLA)
Pay and Accounts Office
Ministry of I and B
5th Floor, DAGCR Bldg,
New Delhi - 110 002.

3. The Pay and Accounts Officer (A 2)
Central Pension Accounts Office,
TRIKOOT - 2, Bhikaji Cama Place,
New Delhi - 110 066.

4. The General Manager,
(Treasury and Chief Financial Officer)
State Bank of Travancore
P.B.No.34, Poojapura
Thiruvananthapuram 695 012.

5. The Director,
Doordharshan Kendra
Swami Vivekananda Salai,
Chennai 600 035.

6. The Chief officer
Centralised Pension Processing Center
State Bank of Travancore, Chembikalam Building
III Floor, Vazhuthacaud, Thiruvanandapuram 695 014.
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the respondents to forbear from recovering any sum from the petitioner pension account in any manner, especially directing the 6th respondent to credit the sums already deducted from petitioner pension to S.B. Account No.57001360028 with the Indira Nagar Branch of the State Bank of Travancore.

For Petitioner :: Mr.V.Bhiman

For Respondents :: Mr.J.Madanagopal Rao
Senior Central Government Standing Counsel for R1 to R3 and R5.
Mr.P.N.Radhakrishnan
for R4 and R6.

O R D E R

The relief sought for in this writ petition is to direct the respondents to forbear from recovering any sum from the petitioner pension account in any manner, especially directing the 6th respondent to credit the sums already deducted from petitioner pension to S.B. Account No.57001360028 with the Indira Nagar Branch of the State Bank of Travancore.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was employed as Senior Administrative Officer in Doordharshan Kendra and retired from service on 31.05.2001 on attaining the age of superannuation. The writ petitioner was allowed to retire from services.

3. The learned counsel for the writ petitioner states that after a lapse of about 8 years, the respondents have initiated actions to recover the alleged excess amount of travelling allowances paid in favour of the writ petitioner. Subsequently, after a lapse of 5 years from the date of initiation of the proceedings, the Branch Manager of the State Bank of Travancore informed in proceedings dated 03.07.2013 that the petitioner is liable to pay the excess amount paid to him by way of 5 monthly instalments. The learned counsel for the petitioner states that the recovery proceedings are initiated without issuing any show cause notice or opportunity to the writ petitioner. Thus, the same is in violation of principles of natural justice. This apart, the petitioner was allowed to retire from service on 31.05.2001 and the recovery proceedings itself commenced in the year 2009 after a lapse of about 8 years from the date of

retirement. Thus, the entire recovery proceedings are liable to be scrapped.

4. The learned senior standing counsel appearing on behalf of the R1,R2,R3 and R5 opposed the contention by stating that it is an unlawfull enrichment on the part of the writ petitioner. In view of the fact that an excess amount of travelling allowance had been paid by submitting certain false bills. This apart, the false submission of bills was without the knowledge of the writ petitioner and therefore, there is no informity as such in respect of the recovery proceedings initiated by the respondents.

5. This court is of an opinion that any order affecting the service condition of the employee is to be passed only after issuing show cause notice and providing a reasonable opportunity to the employee to defend his case in accordance with the procedures contemplated.

6. However, this Court is of an opinion that if at all there is a allegation against the writ petitioner in respect of claiming excess traveling allowances, the actions ought to have been initiated within reasonable period from the date of retirement. Even for the Pensioner, such actions to be issued within 5 years from the date of retirement. However, in the present case on hand, the writ petitioner was allowed to retire from services on 31.05.2001 and the recovery proceedings were initiated only in the year 2009 after a lapse of 8 years. Thus, the very initiation itself is highly belated and the writ petitioner was allowed to retire from service on 31.05.2001 itself. Thus, the recovery imposed after a lapse of eight years cannot be enforced in view of the judgment of the Hon'ble Supreme Court of India in the case of State of Punjab V. Rafiq Masih (white washer case) reported in (2015) 4 SCC.

5. Paragraph 18 of the judgment is relevant for deciding the case on hand, which is extracted hereunder:

> "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 employees 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."

7. The Supreme Court held that recovery of excess payment from the retired employees is impermissible. However, such recovery can be imposed only on certain acceptable circumstances. But in the present case on hand, the petitioner was allowed to retire from service on 31.05.2001 and recovery proceedings were initiated after a lapse of 8 years. During the year of 2009, benefit of installments was provided in the year 2013. Considering the facts and circumstances of the case, this Court is of an opinion that actions initiated by the respondents are unsustainable and accordingly, the impugned actions are held untenable and the amount cannot be recovered from the writ petitioner.

8. The learned counsel for the R4 and R6 informed this Court that already Rs.51,200/- had been recovered from the writ petitioner's pension. Thus the respondents are directed to reimburse the amount already recovered within a period of 8 weeks from the date of receipt of copy of this order. In respect of all recovery proceedings, no further action shall be taken by the respondents in this regard.

9. Thus, the writ petition stands allowed. Consequently, the connected miscellaneous petitions are closed. However, there is no order as to costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

msv

To

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+1 CC to Mr.J. Madanagopal, Advocate sr 42085.
+1 CC to M/s. Rugan and Arya, Advocate sr 42114.

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SP(12/07/2018)