IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16601 of 2013

and

M.P.No.1 of 2013

P.Kumudam ..Petitioner

vs

1.The Branch Officer,(Pen.6)
Office of the Principal Accountant General(A & E)
Chennai - 600 018-Tamilnadu.

2.The Assistant General Manager,
State Bank of India,
(Centralised pension processing centre)
Code No.4470,
No.112/4, KaliammanKoil Street,
Virugambakkam,
Chennai - 600 092.

3.The Branch Manager,
State Bank of India,
Koyembedu Branch, Chennai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents 1 to 3 by way of a Writ of Certiorarified Mandamus, quashing the order dated 08.02.2012 passed by the 1st Respondent to the petitioner herein in his No.Pen.6/U.No.V/PPO.No.C 257341/SCN/11-12, and his consequent letter dated 16.02.2012 in PPO/PEN/PSB/L/4073/4849 to the 2nd respondent and by the 2nd Respondent on 15.02.2013 consequently directing the Respondent 3 not to deduct any amounts from the pension amounts of the petitioner; and also return the already deducted amounts from the month of 25.02.2013 to 30.05.2013 to the tune of Rs.30,996/- and such other amounts as were already deducted from the arrears of pension earlier from the petitioner.

For Petitioner :Mr.V.Vaithiyalingam
For Respondents :Mr.C.K.Chandrasekar for R2 & R3
No appearance for R1

O R D E R

The order of recovery imposed on the writ petitioner is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was employed as Nursing Superintendent Grade III and allowed to retire from service on 30.04.2007, on attaining the age of superannuation. The learned counsel for the writ petitioner further states that the pension was fixed to the writ petitioner based on his last pay drawn and in accordance with the Government orders and pay rules in force. There was no misrepresentation or otherwise on the part of the writ petitioner with regard to the fixation of pension. The pension was fixed by the respondents with reference to the Government orders in this regard. After five years from the date of retirement, the impugned order of recovery has been issued to the writ petitioner by stating that there was an audit objection in respect of the fixation of pension and the excess amount was paid to the writ petitioner. Challenging the order of recovery, the present writ petition filed.

3.The learned counsel for the petitioner states that a show cause notice had been issued to the writ petitioner and the writ petitioner had submitted his explanation stating that he has not committed any act of misrepresentation at the time of fixation of his pension. Further, the order of recovery has been imposed after a lapse of five years from the date of retirement and therefore, the recovery cannot be imposed.

4.The learned counsel appearing on behalf of the respondents opposed the contention by stating that an excess amount has already been paid to the writ petitioner and based on the audit objections, the excess amount paid is sought to be recovered from the writ petitioner. Thus, there is no irregularity or infirmity in respect of the actions initiated by the respondents to recover the excess amount paid to the writ petitioner. This apart, an opportunity has been provided to the writ petitioner to submit his explanation. On receipt of the same, the competent authority has issued the impugned order of recovery. Thus, there is no infirmity as such.

5.This Court is of an opinion that even in case of the payment of excess amount, the same cannot be recovered from an employee after his retirement or after a lapse of many years.

The errors, if any occurred in the fixation of pay or pension can be rectified by the competent authorities. Thus, it is made clear that the errors in relation to the fixation of pension can be corrected. However, the excess amount already paid to the petitioner cannot be recovered in view of the fact that he was allowed to retire from service in the year 2007 and the impugned order of recovery has been issued after a lapse of about five years from the date of his retirement. In this view of the matter, the respondents are at liberty to correct the fixation of pension as per the Government orders and pay rules in force. However, the excess amount already paid to the writ petitioner cannot be recovered. In this regard, the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334] laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgment, 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 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."

6.Following the legal principles settled by the Apex Court, the present writ petition deserves to be considered. As per

Clause(1) of paragraph 18, the excess amount already paid cannot be recovered from the retired employees. Thus, the impugned order passed by the 1st Respondent in proceedings in No.Pen.6/U.No.V/PPO.No.C 257341/SCN/11-12 dated 08.02.2012 and his consequent letter dated 16.02.2012 in PPO/PEN/PSB/L/4073/4849 to the 2nd respondent and the letter by the 2nd Respondent on 15.02.2013 are quashed and the excess amount if any recovered pursuant to the impugned order is directed to be reimbursed to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

7.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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3.The Branch Manager,
State Bank of India,
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+1cc to Mr.C.K.CHANDRASEKKAR, Advocate, S.R.No.42229
+1cc to Mr.V.VAITHIYALINGAM, Advocate, S.R.No.42165

W.P.No.16601 of 2013

AD(CO)
TR(24/07/2018)