

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

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

W.P.No.29549 of 2016
and
WMP.Nos.25561 & 25562 of 2016

E.D.Selvaraj

... Petitioner

Vs.

1.The Assistant Treasury Officer,
Thirukovilur,
Villupuram District.

2.The Assistant Elementary Educational Officer,
Thiruvannainallur Union,
Villupuram District.

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records made in the impugned order of the first respondent in Na.Ka.No.1799/2016/A, dated 25.07.2016 and quash the same.

For Petitioner :: Mr.R.Sreedharan

For Respondents:: Mr.M.Elumalai

Government Advocate

O R D E R

The order of recovery issued by the first respondent in proceedings dated 25.07.2016 is under challenged in this writ petition.

2.The writ petitioner was appointed as a Middle School Head master on 28.06.1960 and he was allowed to retire from service with effect from 30.06.1989. The pension and the revision of pension have been fixed to the writ petitioner in accordance with the Government Orders in force. The order of recovery have been issued by the first respondent in proceedings dated 25.07.2016 stating that the excess pension has been paid based on the erroneous fixation and revision of pension. The recovery has been imposed based on the Audit report filed in this regard.

3.This Court is of an opinion that there is no misrepresentation or otherwise on the part of the writ

petitioner, in respect of the fixation of pension. This apart, no notice or opportunity was given to the writ petitioner before issuing the impugned order of recovery. Any order affecting the pensionary benefits of an employee cannot be issued without providing an opportunity to the aggrieved persons. Thus, the impugned order is in violation of natural justice.

4.This apart, the writ petitioner is a pensioner receiving monthly pension, even if an excess amount has been paid, the same cannot be recovered after a lapse of many years. However, the error if any occurred, in respect of the fixation of the pension or re-fixation of pension, the same shall be corrected and the pension paid in accordance with the Government Orders in force. Thus, it is made clear that mistakes if any in the pension, can be corrected and the eligible pension shall be paid to the writ petitioner. But, the excess payment if any paid, cannot be recovered from the writ petitioner.

5.Even as per the Judgment of the Hon'ble Supreme Court of India in the case of State of Punjab and others v. Rafiq Masih (White Washer) & others reported in (2015) 4 SCC 334, the relevant 18th paragraph of the Judgment is extracted here 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 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."

The Hon'ble Apex Court in sub clause (ii) of the paragraph 18 held that even in the case of excess payment, the same cannot be recovered from the retired employees.

6.This being the legal principles settled by the Hon'ble Apex Court of India, this Court is of an opinion that the impugned order passed by the first respondent is untenable. Accordingly, the impugned order passed by the first respondent in Na.Ka.No.1799/2016/A, dated 25.07.2016 is quashed. The amount already recovered from the writ petitioner is directed to be reimbursed, 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 is no order as to costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Assistant Treasury Officer,
Thirukovilur,
Villupuram District.
- 2.The Assistant Elementary Educational Officer,
Thiruvannainallur Union,
Villupuram District.

+ 1 cc to Mr. R. Sreedharan, Advocate Sr.38210
+ 1 cc to Mr.Government Pleader Sr.38657

W.P.No.29549 of 2016

(CS-DR)
EU(29/06/2018)