IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29437 of 2007
and
M.P.No.1 of 2007

S.Janakiraman ... Petitioner

Vs.

1. The Accountant General Office,
   Teynampet, Chennai - 18.

2. Pension Officer,
   DPI Complex, College Road,
   Nungambakkam, Chennai - 34. ... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the letter sent by the first respondent dated 22.11.2004 in No.PACS/III/8-142/2004-05 and quash the same thereby directing the respondents not to reduce the pensionary benefits of the petitioner with direction to refund the recovered amount.

For Petitioner : Mr.A.R.Nixon

For Respondent : Mr.T.Ravikumar
Senior Counsel for R1
Mr.P.Raja for R2

O R D E R

The petitioner filed a writ petition challenging the impugned order dated 22.11.2004 in No.PACS/III/8-142/2004-05 and quash the same thereby directing the respondents not to reduce the pensionary benefits of the petitioner with direction to refund the recovered amount.

2. The case of the petitioner is that the petitioner is a retired Pensioner and he is aged about 82 years. He retired as Primary School Head Master (Special Grade) Venguranpettai and drawing pension through the second respondent in P.P.O.No.T 45888. The petitioner was retired from service on 31.07.1984.

His pensionary benefits have been fixed by the first respondent based on the last drawn scale of pay.

3. The learned counsel for the petitioner further submits that the petitioner is drawing revised pension at Rs.4,000/- from 01.04.1999 as per G.O.Ms.No.449. The said pension was received till 31.07.2004 without any issue. The respondent has reduced the Pension from Rs.4000/- to Rs.3028/- and revised the scale of pay without intimating the same to the petitioner. Immediately, thereafter the petitioner has visited the first respondent office and enquired about the reduction. The first respondent has not given any reply, on the other hand, the first respondent sent a xerox copy of the letter dated 23.11.2004 sent by the first respondent to the Bank addressed to the Bank. Based on the said letter, the second respondent/pension officer was directed to deduct Rs.1000/- from 01.08.2004 till now, for a tune of Rs.92,325/- was deducted from the petitioner's pension. Challenging the illegal action, the present Writ Petition is filed. The learned counsel for the petitioner relied upon the decision of the Honourable Apex Court, reported in (2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others).

4. The learned counsel for the respondents 1 & 2 have filed a counter. It is stated that the first respondent did not give any reply to his letter which is baseless and devoid of truth. The petitioner in his letter dated 15.10.2004 addressed to the first respondent, requested that his pension may be fixed at Rs.3028/- taking into account G.O.No.449 Finance (Pension) Department dated 12.10.1999 instead of at Rs.2950/- as pointed out by the Audit party. Thereafter the petitioner requested that the amount of excess payment may be calculated at this rate and the Bank Manager may be advised for giving him the pension at Rs.3028/-. This clearly show that the petitioner had knowledge and notice of the audit observation and in fact was in agreement with the observation of Audit Party that he was not entitled to the revised pension at Rs.4000/- from 01.01.1999 in the scale of pay applicable to the Special Grade Head Master. In view of this, his present claim in the Writ Petition that his revised pension should be fixed at Rs.4000/- is without merit and deserves to be rejected. However, the counter disclose that no opportunity was given to the petitioner before recovery and stated that the salary of the petitioner fixed in wrong scale on that basis the pension has been paid and therefore the same was recovered.

5. It is useful to extract hereunder the relevant portion of (2015) 4 Supreme Court Cases 334 (State of Punjab and others vs. Rafiq Masih (White Washer) and others)

“10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the state, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

> 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 on 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) Recovey in cases when an employee has wrongfully been required bo 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. Admittedly the petitioner retired from his service on 31.07.1984, after a lapse of 20 years the respondents have initiated the recovery proceedings without any notice to the petitioner. Even if the respondent fixes wrong scale of pay to the petitioner, unless getting proper reply form the petitioner, ordering recovery is un-sustainable one. Further, the respondent did not establish that the petitioner received the amount on mis-representation. In the absence of any mis-representation and without following due process of law ordering recovery is bad in law.

7. In view of the above and the decision cited supra, the Writ Petition stands allowed. Consequently connected Miscellaneous Petition is closed. No costs.

dh

Sd/-
Assistant Registrar(CS-V)

// True Copy//

Sub Assistant Registrar

TO

1. The Accountant General Office,
Teynampet, Chennai - 18.

2. Pension Officer,
DPI Complex, College Road,
Nungambakkam, Chennai - 34.

+ 1 CC TO MR.A.R.NIXON, ADVOCATE SR 51548

+ 1 CC TO MR.T.RAVI KUMAR, ADVOCATE SR 50602

+ 2 CCS TO THE GOVT. PLEADER, SR 51852, 51931

KR/11/10/18