IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

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

W.P.No.33706 of 2016
and
W.M.P.No.29090 of 2016

T.K.Narayanasamy ...Petitioner

Vs

1.The Treasury Officer,
District Treasury Officer,
Thanjavur,
Thanjavur District.

2.The Accountant General,
Accountant General Office,
No.360, Anna Salai,
Teynampet, Chennai - 18 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ or order or direction, particularly in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 1st respondent dated 07.09.2016 in Na.Ka.No.700/2016/S1 in P.P.O.No.A304934/T.S.7993 against the Petitioner and quash the same thereby direct the 2nd respondent to instruct the 1st respondent not to recover the alleged excess payment of Rs.3,20,419/-.

For Petitioner :M/s.A.R.Nixon
For Respondents:M/s.A.Sri Jayanthi, Spl GP for R1
M/s.T.S.Selva Rani for R2

O R D E R

The order of recovery issued by the 1st respondent in proceedings dated 07.09.2016 is under challenge in this writ petition.

2.The writ petitioner is a retired Government employee of the School Education Department. The petitioner was allowed to retire from service on 31.05.1991 on attaining the age of superannuation. After his retirement, the pension as applicable to the writ petitioner has been fixed in accordance with the Government orders in force. The petitioner was continuously receiving the pension under the Tamil Nadu Pension Rules and all of a sudden, the Treasury Officer issued the impugned order in proceedings dated 08.09.2016, stating that excess pension had been paid to the writ petitioner and the same is to be recovered from the writ petitioner.

3.The learned counsel for the petitioner states that no notice or opportunity was given to the writ petitioner before passing the impugned order of recovery. This apart, there was no misrepresentation on the part of the writ petitioner in respect of the grant of revision of pension as applicable under the Pay rules in force.

4.The learned Special Government Pleader appearing on behalf of the respondents contended that the writ petitioner himself had initiated for the wrong fixation of his revision of pension. This Court is unable to accept such condition in view of the fact that as a pensioner, the writ petitioner cannot initiate any fixation of pension. A retired Government employee can submit his representation or explanation and it is the duty of the competent authorities to verify the same and grant revision of pension in accordance with the Government orders and the Pay rules in force. Mere submission of application or representation by the pensioner, cannot be construed as a misrepresentation in respect of the excess payment or the recovery of such excess payment. This apart, the learned Special Government Pleader is unable to defend the ground that no notice and opportunity was given to the writ petitioner before passing the impugned order of recovery.

4.Any order affecting the service conditions of an employee or the retirement benefits of the employee cannot be issued without issuing any show cause notice and opportunity to the employee concerned. This apart, even in case of any excess payment of pension, the same cannot be recovered after many years, more so, from the pensioners. The legal principles in this regard are settled by the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334] . The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, 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.

5.In view of the legal principles settled that recovery cannot be imposed in respect of the excess payment made to the pensioners, this Court is inclined to consider the case of the writ petitioner.

6.Accordingly, the impugned order of recovery passed by the 1st respondent in proceedings in Na.Ka.No.700/2016/S1 in P.P.O.No.A304934/T.S.7993 dated 07.09.2016 is quashed.

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

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Treasury Officer,
District Treasury Officer,
Thanjavur,
Thanjavur District.

2.The Accountant General,
Accountant General Office,
No.360, Anna Salai,
Teynampet, Chennai - 18.

+1cc to Mr.A.R.Nixen, Advocate SR.No.36937

VG(II)
snL21.6.2018