

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2612 of 2018
and CMP No.21292 & 21293 of 2018

1. The Director of School Education,
Higher Secondary,
DPI Compound, College Road,
Chennai - 600 006.
 2. Director of Pension,
Directorate of Pension,
DMS Compound,
Teynampet,
Chennai - 600 006.
 3. The Regional Joint Director of
Treasuries and Accounts,
Trichy, Trichy District.
 4. The Assistant Treasury Officer,
Mayiladuthurai,
Nagapattinam District. Appellants
- K.Rajarethinam ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 21.11.2017 made in W.P.No.27549 of 2013 as against writ petition is filed under article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with the order No.Proc.Pdl.No.252/2013/A3 dated 24.06.2013 passed by the fourth respondent herein and quash the same, consequently direct the third and fourth respondents therein to refund the recovered pension amount to the petitioner.

For Appellants : Mr.R.Udayakumar
Additional Government Pleader

For Respondent : Dr.R.Sampath Kumar

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

The Instant writ appeal is directed against the order dated 21.11.2017 passed in W.P.No.27549 of 2013.

2. The writ petitioner was working as a Tamil Teacher in T.G.N. Municipal Higher Secondary School, Mayiladuthurai. He retired from service on 30.06.1999, on attaining the age of superannuation. On account of certain audit objections, the Assistant Treasury Officer, Mayiladuthurai, issued an order of recovery on 24.06.2013 stating that an excess payment of pension had been made to the writ petitioner. In view of the same, recovery of Rs.96,711/- was ordered. This order of recovery was sought to be challenged by the writ petitioner in the writ petition.

3. The petitioner in the writ petition has stated that he has not made any misrepresentation or suppressed any material fact in obtaining the pension.

4. The learned Single Judge allowed the writ petition relying on the judgment of the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, reported in (2015) (4) SCC 334.

5. Heard the learned counsel for the parties and perused the records.

6. The proceedings dated 26.04.2013, for recovery of pension, is extracted hereunder.

Dated: 24.06.2013

Sub: Inspection - R.J.D. Inspection Report 2012-13 - Excess payment of pension - Recovery Orders issued - Reg.

Ref: The R.J.D Inspection Notes for the year 2012-2013

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Order:

With reference to the Inspection report of the Regional Joint Director of Treasuries and Accounts, Trichy, the excess payment of Civil / Teacher / Civil Family pensioner has been made due to incorrect revision with reference to para 2(vi) of G.O.No.235/Dt:01.06.2009.

Hence the excess paid pension of the Civil / Teacher / Civil Family pensioner has been recovered as detailed below.

Pensioner Name	: K.Rajarethinam
PPO No.	: C115853
Total Excess Pension	: Rs.96711
No.of Installments to be recovered	: 16
Amount of first installment	: Rs.6711 x 1 Rs.6000 x 15

Future Pension

Red. Pen	: 6975
D.A.	: 6780
M.A	: 100
Total	: 13855

7. The writ petitioner, as of today is about 79 years. As held by the learned Single Judge, the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, reported in (2015) (4) SCC 334, has summarised the situations wherein recoveries by the employers, would be impermissible in law. Paragraph No.12 of the said judgment reads as under.

"12. 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."

8. As held by the learned Single Judge, the issue is completely covered by the judgment of the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih, reported in (2015) (4) SCC 334 and the order of recovery dated 24.06.2013 is unsustainable in law. Hence, the instant Writ Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

9. The amount already recovered from the petitioner, if any, has to be reimbursed to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

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Sub Assistant Registrar

To

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cnr(CO)
SSM(02/01/2019)