IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.11.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2694 of 2018
and C.M.P.No.21981 of 2018

1.The Regional Joint Director of Treasuries and Accounts,
Collectorate Building,
Vellore-632009, Vellore District.

2.The Treasury Officer,
Sub Treasury,
Vaniyambadi,
Vellore District. ... Appellants/Respondents

Vs.

1.M.Arumugam

2.The Accountant General,
O/o. Principle Accountant General,
(Accounts and Entitlement)
Tamil Nadu, 361, Anna Salai,
Chennai-600018. ... Respondents/Petitioners

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.32545 of 2014, dated 26.06.2018.

W.P.NO.32545/14 : Writ petition filed under Article 226 of the constitution of India praying to issue a Writ of Declaration, Declaring the reduction of pension amount from Rs.18,742/- to Rs. 5,644/- in respect of PPO No.C452252 with the office of the 1st Respondent as null and void and consequentially direct the Respondents to continue to pay the pension amount of a sum Rs.18 742/- per month as paid up to July 2014 through ECS by the 3rd Respondent Sub Treasury with the petitioner Savings Bank Account No.10948185514 with State Bank of India Ambur Branch.

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Government Pleader.

J U D G E M E N T
(Judgment of the Court was delivered by S.MANIKUMAR, J)

The instant writ appeal is directed against the order made in W.P.No.32545 of 2014, dated 26.06.2018, setting aside the order of recovery.

2. The first respondent herein was working as a Secondary Grade Teacher in Panchayat Union Elementary School in Pernampet Union, Vellore District. He retired from service on 31.05.1987, on attaining the age of superannuation. Extension of service was granted and the first respondent herein retired on 31.05.1988. On account of certain audit objections, the Regional Joint Director of Treasuries and Accounts, Vellore, issued an order of recovery on 14.07.2014 stating that an excess payment of pension from 01.04.1999 to 31.05.2014 is Rs.4,31,238/- should be recovered from the first respondent. This order of recovery was sought to be challenged by the first respondent herein, in W.P.No.32545 of 2014. The writ petitioner has stated that he has not made any misrepresentation or suppressed any material fact in obtaining the pension.

3. Upon considering the facts and circumstances of the case, a 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.

4. Instant writ appeal is filed on the following grounds:-

> "(i) Writ Court has failed to observe that the recovery order excess payment of pension imposed on the writ petitioner is in order. Even after, the order to reimburse the entire alleged excess amount already recovered from the writ petitioner has been ordered by the learned Judge which is not at all maintainable either in law or on facts.
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> (ii) Writ Court ought to have considered that the writ petitioner is a Headmaster and in the event of granting an excess amount to him for which he is not legally entitled. He ought to have reported the fact to the authority concerned for correcting the error but the writ petitioner has not done so.
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> (iii) Writ Court ought to have seen that the Government money has been paid in excess to the writ petitioner that is why the recovery order has been issued for recovering the excess money paid to him which is well permissible in the rule provisions.
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> (iv) Writ Court ought to have seen that the appellants herein have acted upon as per the procedures and well within the ambit of rule provisions and hence the recovery order issued by the 2nd appellant herein is well sustainable.
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> (v) Writ Court has failed to observe that during the period from 01.03.2013 to 31.05.2014, the Audit team of Regional Joint Director of Treasuries and Accounts, Vellore were inspected

the Pension Records of the Sub Treasury, Vaniyambadi and find out the excess pension paid to the writ petitioner and instructed to recover the excess amount paid to him. After raising Audit Objection by the Regional Joint Director of Treasuries and Accounts, Vellore the pension arrear paid to the writ petitioner once again verified by the pension section and the another mistake of wrong calculation came to light and find out that a sum of Rs.4,31,238/- was paid as excess.

(vi) Writ Court has failed to observe that the above said wrong calculation has been intimated to the writ petitioner and after getting concurrence letter from the writ petitioner the excess amount of Rs.4,31,238/- was recovered by simple monthly installment from his monthly recovery and lump sum recovery.

(vii) Writ Court ought to have seen that the writ petitioner is a Special Grade Primary School Headmaster and hence he knows the pension amount for which he is entitled. If any wrong fixation is made he could have approached the official concerned and rectify the same. Without doing so he further falsely alleged that the refixation and recovery of excess payment was not made known to him before recovery procedure commenced. This clearly indicates the malice and malafide intention of the writ petitioner. On this count itself the relief sought for by the writ petitioner is liable for rejection.

(viii) Writ Court ought to have considered that the respondent herein has been paid excess pension and the excess paid amount could be recovered from the petitioner without giving him any notice or getting his consent as per the instructions issued in G.O.Ms.No.702 Finance (PC) Department dated 07.10.1988 and Government letter No.72411 Finance (PGC) Department dated 10.08.2010. The excess amount mistake find out during the period from 01.03.2013 to 31.05.2014 and recovery started from July 2014, hence the recovery made within the frame of Government Rules and in simply monthly installment and with the concurrence of the writ petitioner. There was no violation of legal principles.

(ix) Writ Court ought to have considered that the Hon'ble Apex Court in several orders have directed that if the excess amount of pension is due to the fraudulent or misrepresentation of the individual then that excess amount has to be recovered besides reducing the pension to exact amount for which the individual is entitled. In the instant case the respondent herein is well aware that his pension has been excess amount for which the individual is entitled. In the instant case the respondent herein is well aware that his pension has been excessively calculated and paid even after that also he has not brought into the notice of the appellants herein. This amount to suppression of fact only. This squarely amount to the misrepresentation of fact. Hence, the recovery order issued is quite maintainable.

(x) Writ Court has failed to observe that the writ petitioner was retired from service on 31.07.1987 and re-employed from 01.08.1987 to 31.05.1988 and paid Rs.513/- as pension with effect from 01.08.1987 to 13.12.1987 and Rs.521/- with effect from 14.12.1987 as per the Accountant General's Chennai proceedings in P.V.9A/II/A 21-173/88-89. Subsequently, his pension has been fixed as Rs.2158/- with effect from 01.01.1996 as per G.O.Ms.No.174 Finance (PC) Department, dated 18.05.1999 and sanctioned by the A.E.E.O., Pernambut. Further, after implementing the revised pay rules 2006 the pay of the writ petitioner has been revised vide G.O.Ms.No.235 Finance (PC) Department, dated 01.06.2009 the pension of the writ petitioner also revised and re-fixed as Rs.7947/-.

(xi) Writ Court has failed to observe that during the period from 01.03.2013 to 31.05.2014, the Audit team of Regional Joint Director of Treasuries and Accounts, Vellore were inspected the Pension Records of the Sub Treasury, VAniyambadi, it has been pointed out and find out that the pensioners are not eligible for the time-scale of Rs.8000-275-13500 and ordered that the pensioner is entitled for the time-scale of Rs.5900-200-9900 since the pensioner has rendered net qualifying service of 29 years, he is eligible for Rs.2953 as pension. As per the G.O.Ms.No.235 Finance (PC) Department, dated 01.06.2009 the pension of the writ petitioner also revised and re-fixed as Rs.5862/- instead of Rs.7947/-. After raising Audit Objection by the Regional Joint Director of Treasuries and Accounts, Vellore the pension arrear paid to the writ petitioner once again verified by the pension section and the mistake of wrong calculation came to light and find out that a sum of Rs.4,31,238/- was paid as excess. Hence, the Regional Joint Director of Treasuries and Accounts, Vellore instructed to recover the excess amount paid to the writ petitioner. As per the instructions of the Regional Joint Director of Treasuries and Accounts, Vellore, the monthly recovery of Rs.5750/- was effected from July 2014 and recovered from the writ petitioner.

(xii) Writ Court has failed to observe that during the period from 01.03.2013 to 31.05.2014, the Audit team of Regional Joint Director of Treasuries and Accounts, Vellore were inspected the Pension Records of the Sub Treasury, Vaniyambadi, it has been pointed out and find out that the writ petitioner was retired as Special Grade Primary School Head Master on 31.07.1987 since the writ petitioner retired before 01.06.1988 there is no separate time scale of pay for the post of primary school, Head Master as per the Government Letter No.600024/CMPC/2001-1, Finance (CMPC) Department, dated 18.09.2000. As per the G.O.200 para 2(VI) revision time scale of pay 8000-275-13500 is not eligible. The pension has to be revised in the time scale of pay 5900-200-9900 which is corresponding to 780-35-1025-40-1385. Therefore, the excess payment from 01.04.1999 to 31.05.2014 is Rs.4,31,238/- has to be recovered from the writ petitioner. Hence, the excess payment was intimated to the writ petitioner and the recovery was imposed with his concurrence and the writ petitioner has given concurrence letter and accepted to recover a sum of Rs.5750/- per month from July 2014 and never raised objection to recover the excess paid amount.

(xiii) Writ Court has failed to observe that the pension arrear was arrived as excess, but immediately within a short period the mistake was find out and recovered by monthly installment with the concurrence of the writ petitioner, the order to reimburse the entire alleged excess amount already recovered from the writ petitioner has been ordered by the learned Judge which is not in order and hence it is null and void."

5. Heard the learned counsel for the appellants.

6. The proceedings dated 14.07.2014, for recovery of pension, is extracted hereunder:-

14.07.2014

Inspection Report of the Regional Joint Director of Treasuries and Accounts, Vellore

29.M.Arumugam, C452252, SBI, ABB, 6/5:

The Pensioner was retired as Special Grade Primary School Head Master on 31.07.1987 since the pensioner retired before 01.06.1988 there is no separate time scale of pay for the post of primary school, Head Master as per the Government Lr.no.600024/CMPC/2001-1, Finance (CMPC) Dept. dt. 18.09.2000. As per the G.O.200 Para 2(VI) revision time scale of pay 8000-275-13500 is not eligible. The Pension has to be revised in the time scale of pay 5900-200-9900 which is corresponding to 780-35-1025-40-1385. Therefore the excess payment from 01.04.1999 to 31.05.2014 is Rs.431238/- should be recovered from the pension and fact report to Audit.

7. The writ petitioner, as on today is about 85 years. As stated 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:
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> 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 observed 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 14.07.2014 is unsustainable in law. Hence, the instant Writ Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dm

1.The Accountant General,
O/o. Principle Accountant General,
(Accounts and Entitlement)
Tamil Nadu, 361, Anna Salai,
Chennai-600018.

2.The Regional Joint Director of Treasuries and Accounts,
Collectorate Building,
Vellore-632009, Vellore District.

3.The Treasury Officer,
Sub Treasury, Vaniyambadi,
Vellore District.

W.A.No.2694 of 2018
and
C.M.P.No.21981 of 2018

AD(CO)
GN(24/01/2019)