BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 11.10.2018
CORAM
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.1264 of 2018
and
C.M.P(MD)No.8830 of 2018

1.The Branch Manager,
State Bank of India,
Madurai Branch (0869),
Sangam Tower,
No.7-A, West Veli Street,
Madurai - 625 001.

2.The Assistant General Manager,
State Bank of India,
Centralized Pension Processing Centre,
(Code NO.4470),
D.No.112/14, Kaliyamman Koil Street,
Virugambakkam,
Chennai - 600 092. .. Appellants

Vs.

1.C.Jabamani

2.The Senior Divisional Finance Manager,
(Sr.D.F.M.), Southern Railway,
Madurai - 625016.

3.The Divisional Railway Manager,
(D.R.M.), Southern Railway,
Madurai Division,
Madurai - 625016.

4.The Finance Advisor and Chief Audit
and Accounting Officer, (FA & CAO),
Central Southern Railway,
Park Town,
Chennai - 620 003. .. Respondents

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 01.03.2018 made in W.P(MD)No.19822 of 2014 by allowing this writ appeal.

Prayer in WP(MD). 19822/ 2014 :
Writ Petition is filed under Article 226 of the

Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned letter No. MISC/Recvy-86878 dated 19.05.2014 issued by the 2nd respondent and quash the same and directing the respondents to issue the pension (P.P.O) NO. 0608213393 and SB A/c NO. 0828724463 maintained with the 1st respondent bank) without any deduction within the period that may be stipulated by this HOnourable Court.

For Appellant : Mr.S.Sethuraman
For R-1 : Mr.K.Sureshkumar
For R-2 & R-3 : No Appearance

JUDGMENT

[Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.]

This writ appeal is directed against the order dated 01.03.2018 passed by the learned single Judge in W.P(MD)No.19822 of 2014.

2. The brief facts of the case are that the first respondent / writ petitioner was a retired employee of the Southern Railways having retired on 31.08.2007. He had been receiving his pension after retirement through the second appellant / bank in his Savings Bank Account. It is stated that the second appellant is deducting a sum of Rs.2,500/- from the pension amount of the first respondent from May, 2014, for the excess amount said to have been received by him. The said amount is deducted even without any notice to the first respondent or even without conducting any enquiry. The reason stated is that there was an error in calculating the Dearness Allowance eligible to the first respondent / writ petitioner and only later, it was noticed and it was rectified.

3. Aggrieved over the same, the first respondent / writ petitioner filed the writ petition contending that he is a senior citizen and the excess amount paid was neither due to any mistake committed or any misrepresentation or fraud on the part of the writ petitioner and it was only due to the mistake committed by the officials of the appellants / bank.

4. The learned single Judge relied on the settled principle that any amount paid or received due to negligence and carelessness of the appellant cannot be recovered as a mater of right.

5. The learned single Judge relied on the judgement of the Honourable Supreme Court in *Syed Abdul Qadir and Others v. State of Bihar and others* reported in *2009 3 SCC 475*, wherein it has been held that the relief against the recovery is granted by Courts not because of any right in the employees, but in equity, exercising

judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid or in cases where the error is detected or corrected within a short time of wrong payment, Courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

6. Reliance was also placed by the learned single Judge on the judgment in *Shyam Babu Verma v. Union of India* reported in *1994 SCC (2) 521* and the judgment in *Punjab and others v. Rafix Masih (White Washer)* reported in *2015(5) CTC 455.*

7. The basic principle laid down in all the above judgments is that if the amount paid in excess is not due to the misrepresentation or fraud on the part of the employee / payee, but due to the mistake committed by the employer, it is not recoverable.

8. Keeping the above principles laid down by the Honourable Supreme Court in mind, the writ petition was allowed the impugned order passed by the second appellant was set aside. Further, there was a direction to the second appellant / second respondent to refund the amount already deducted from the writ petitioner's pension forthwith.

9. Aggrieved by the said order, the present writ appeal is preferred by the appellants / bank.

10. The learned counsel appearing for the appellants contends that there is no employer-employee relationship between the second appellant and the first respondent. The bank is not the employer of the writ petitioner and it is only acting as an agent and and therefore, the decisions referred to by the learned single Judge are not applicable to the present case on hand.

11. We have heard the submissions made on either side and perused the materials available on record.

12. In fact, it is pointed out that the amount already recovered from the first respondent / writ petitioner has been deposited before the Railway administration.

13. As admittedly, there is no privity of contract between the writ petitioner and the appellants / bank and even the recovered amount has been deposited to the Railway administration, the appellants cannot seek to recover it from the individual employee. They can recover it only against the Railway administration.

14. The learned single Judge in fact had discussed the issue in detail and specifically stated that it is open to the appellants / bank to approach the civil Court for recovery of the amount.

15. Therefore, the order passed by the learned single judge

does not warrant any interference and there is no merit in this writ appeal. It is open to the appellants to initiate recovery action by filing a civil suit subject to limitation.

16. In the result, the writ appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-I)

+1cc to Mr.S.SETHURAMAN, Advocate, SR.No. 90198
+1cc to Mr.K.SURESH KUMAR, Advocate, SR.No. 90012

W.A(MD)No.1264 of 2018
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PM
KK/SV/SAR-1/14.11.2018/4P-3C