



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2018

CORAM

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

W.P.(MD) No.10823 of 2011
and
M.P(MD)No.2 of 2011

M.K.Sekar

... Petitioner

-vs-

The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai - 625 002.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings No.B29/10609/2010, dated 14.5.2010 and to quash the same as illegal in so far as the recovery of Rs.7,928/- is concerned and consequently direct the respondent to refund the family pension recovered from the Petitioner from the month of April 2010 to till date within the period stipulated by this Court.

For Petitioner : M/s.M.Ajmalkhan
For Respondent : M/s.K.Govindarajan

ORDER

The order of rejection issued by the respondent in proceeding dated 14.5.2010, is under challenge in this Writ Petition.

2.The Writ Petitioner is a family pensioner. The wife of the Writ Petitioner Late.Dr.R.Rajathi was working as Medical Officer in the Health Department of the Respondent/Corporation and passed away on 27.10.1997. Subsequently, the Writ Petitioner was sanctioned with family pension and received the same. However, the respondents have issued the impugned order of recovery on 14.5.2010 stating that excess payment was made to the Writ Petitioner by way of family pension and the same is to be paid within three days, failing which, the amount will be recovered by way of instalments.

3.The learned counsel for the respondent states that excess payment was made erroneously by the authorities and therefore, the



same is sought to be recovered. The errors can be corrected by the competent authority. Thus there is no infirmity in the impugned recovery order.

4. The learned counsel for the Petitioner states that no show-cause notice or an opportunity was provided to the Writ Petitioner before issuing the order of recovery, when there is no misrepresentation or otherwise on the part of the Petitioner. The family pension was calculated by the Establishment Section of the Respondent/Corporation and disbursed to the Writ Petitioner. Thus the Writ Petitioner cannot be penalized. This Court is of an opinion that admittedly there was no show-cause notice or opportunity was given to the Petitioner before issuing the order of recovery and thus, the same is in violation of the principles of natural justice. Secondly, there is no misrepresentation on the part of the Writ Petitioner and the family pension was calculated only by the Establishment Section of the Respondent/Corporation and the Writ Petitioner cannot be found fault with. This apart, even if any excess payment is made, the same cannot be recovered from the Writ Petitioner in view of the principles laid down by the Honourable Supreme Court of India. If any error in the fixation, then the competent authorities are at liberty to correct the error and pay the correct family pension as applicable to the Writ Petitioner under the Rules. Thus correction of errors are permissible and recovery alone is impermissible.

5. The Hon'ble Supreme Court of India in the case of **State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334** laid down the principles in the matter of recovery and paragraph No.18 of the judgment is relevant and the same 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

6.As per sub-clause(1) of Paragraph 18, recovery from the pensioners are impermissible. Such being the principles laid down by the Honourable Supreme Court of India, the impugned order is unsustainable. Accordingly, the order of recovery passed by the respondent in proceedings No.B29/10609/2010, dated 14.5.2010 is quashed and the Writ Petition stands allowed. If any amount is already recovered from the Writ Petitioner, the same is directed to be reimbursed within a period of 12 weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai - 625 002.

+ 1 CC TO Mr.K.GOVINDARAJAN, ADVOCATE IN SR No. 47661
+ 1 CC TO M/s.AJMAL ASSOCIATES, ADVOCATE IN SR No. 47398

VSN

TE/JC/SAR-1 : 20/02/2018 : 3P/4C

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