



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD)No.7062 of 2011

and

M.P.(MD) No.2 of 2011

D.Anbian

... Petitioner

Vs.

1. The Accountant General,
O/o. The Principal Accountant General,
361, Anna Salai,
Madras - 600 018.

2. The Treasury Officer,
Tirunelveli.

3. The Sub Treasury Officer,
O/o.Sub Treasury,
Palayamkottai.

4. The Assistant Executive Engineer,
Tractor Workshop,
Tirunelveli - 7.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st Respondent in his proceedings P07/5/rev./2010-2011/10703144/PPO DT.6.5.2011 and quash the same as illegal.

For Petitioner : Mr.N.S.Ramakrishna Dass

For R1 : Mr.P.Gunasekaran

For R2 to R4 : Mr.M.Muthu

Additional Government Pleader

O R D E R

The order of recovery issued by the first respondent in proceedings dated 06.05.2011 is under challenge in this writ petition.

2.The writ petitioner was employed as Machinist Special Grade in the third respondent office and voluntarily retired from service on 31.12.2001. Based on the last pay drawn, the pensionary benefits were disbursed to the writ petitioner and accordingly, he has received the monthly pension. Without issuing any show cause notice, the impugned order of recovery was issued in proceedings dated 06.05.2011 stating that there was an audit objection in respect of the excess payment of pension to the writ petitioner.



Accordingly, the excess amount is sought to be recovered from the monthly pension of the writ petitioner in equal instalments.

3. This Court is of an opinion that if any order affecting the rights of the pensioner cannot be issued without providing an opportunity to the retired employee. In the present case, the impugned order of recovery was issued without issuing any show cause notice to the writ petitioner and therefore, the same is in violation of the principles of natural justice. This apart, the writ petitioner is an retired employee and the excess amount if at all any paid to the retired employee cannot be recovered, in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 Supreme Court Cases 334** settled by the principles in paragraph 18, which is extracted here under:

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 the 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.

4. In view of the judgment of the Hon'ble Supreme Court of India cited supra, the recovery imposed on the writ petitioner is not sustainable. However, it is made clear that the arrears in the fixation of pension can be rectified and the pension as applicable in accordance with the Government Orders and the pay rules can be granted to the writ petitioner. Further, the excess amount if any paid cannot be recovered.



5. Accordingly, the order impugned issued by the first respondent in proceedings No.P07/5/rev./2010-2011/10703144/PPO, dated 06.05.2011, is quashed in respect of recovery alone and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Accountant General,
O/o. The Principal Accountant General,
361, Anna Salai,
Madras - 600 018.
2. The Treasury Officer,
Tirunelveli.
3. The Sub Treasury Officer,
O/o.Sub Treasury,
Palayamkottai.
4. The Assistant Executive Engineer,
Tractor Workshop,
Tirunelveli - 7.

+1cc to Spl.Government Pleader Sr.No.57314

+1cc to Mr.N.S.Ramakrishna Dass, Advocate Sr.No.56978

+1cc to Mr.P.Gunasekaran, Advocate Sr.No.57681

MM

VB/KK/SAR1/11.04.2018/3P/8C

W.P. (MD) No.7062 of 2011
21.03.2018