



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

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

WEB COPY

W.P.(MD)No.8645 of 2011

M.Stanislaus

... Petitioner

Vs.

1. The Accountant General,
(A & E) Pension,
Chennai - 18.

2. The District Treasure Officer,
District Treasury,
Dindigul - 624 002.

... Respondents

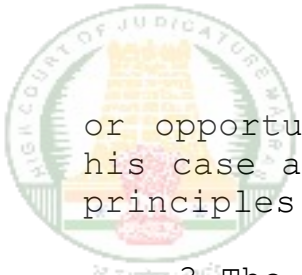
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent dated 10-06-2011 in proceedings Na.Ka.No.10133/11/N-1-1 passed in pursuance of the objections made by the 1st Respondent in the audit conducted in the year 2002-2003, quash the same as arbitrary, ultra-vires and direct the Respondents to refix the Pension at Rs.4,000/- in the light of Government Order dated 18-05-1999 and direct the Respondents to repay the sum of Rs.57,660/- deducted illegally without issuing any notice to the petitioner.

For Petitioner	: Mr.R.G.Shankar Ganesh
For R1	: Mr.P.Gunasekaran
For R2	: Mr.R.Sethuraman
	Special Government Pleader

O R D E R

The order of recovery issued by the second respondent in proceedings dated 10.06.2011 is under challenge in this writ petition.

2.The writ petitioner was employed as a Teacher and retired from service on 31.07.1981. The learned counsel appearing on behalf of the writ petitioner states that the pensionary benefits and pension were fixed to the writ petitioner based on the Government Order and pay rules in force. However, the second respondent suddenly passed the impugned order of recovery in proceedings dated 10.06.2011 based on the audit objection and by stating that the excess amount of pension was paid to the writ petitioner. The writ petitioner states that no show cause notice



or opportunity was given to the writ petitioner even to defend his case and therefore, the impugned order is in violation of the principles of natural justice.

3. The learned Special Government Pleader appearing on behalf of the second respondent is unable to dispute the fact that no show cause notice was issued to the writ petitioner before passing the impugned order of recovery.

4. This Court is of an opinion that any order affecting the right of the pensioners has to be issued only after providing the reasonable opportunities to defend their case. This apart, the excess payment if at all any paid to a retired Government employee, the same cannot be recovered after a lapse of many years, 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.

5. In view of the legal principles cited supra, this Court is of an opinion that the excess payment already paid to the writ petitioner cannot be recovered. However, it is made clear that the revision of pension and the monthly pension shall be regulated



in accordance with the Government Orders in force and as per the pay rules. There is no impediment in correcting the arrears in respect of the revision of pension and the monthly pension.

6. Accordingly, the order impugned issued by the second respondent in proceedings Na.Ka.No.10133/11/N-1-1, dated 10-06-2011, is quashed in respect of recovery of alone and the respondents are at liberty to correct the fixation of pension and monthly pension. The excess amount already recovered from the writ petitioner is directed to be reimbursed within the period of 12 weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petitioner stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(w)

/True Copy/

Sub Assistant Registrar

To

The District Treasure Officer,
District Treasury,
Dindigul - 624 002.

+1cc to Mr.R.G.Shankar Ganesh, Advocate Sr.No.52731
+1cc to Mr.P.Gunasekaran, Advocate Sr.No.57677

MM

VB/SKN/RSK/SAR4/11.04.2018/3P/4C

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