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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

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

W.P. (MD) No.18757 of 2013

and

M.P. (MD) No.1 of 2013

R.Harinarayanan

... Petitioner

-vs-

The Sub Treasury Officer,
Aranthangi,
Pudukottai District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Respondent in R.C.No.156/B/2013 dated Nil.06/2013 and quash the same as illegal and arbitrary and consequently direct the Respondent to reimburse the amount recovered from the petitioner on the basis of the Impugned Order.

For Petitioner : Mr.P.Ganapathi Subramanian

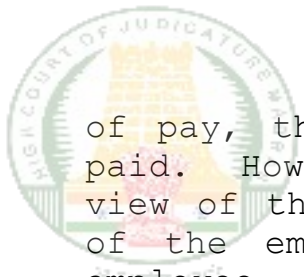
For Respondent : Mr.R.Sethuraman,
Special Government Pleader

O R D E R

The order of recovery issued against the writ petitioner vide proceedings issued in June, 2013 is under challenge in this writ petition.

2.The writ petitioner was employed as Village Administrative Officer and retired from service on 30.04.2005 on attaining the age of superannuation. The retirement and terminal benefits were settled in favour of the writ petitioner and the pension and revision of pension was also granted in accordance with the Pay Rules in force. While so, the respondent suddenly issued an impugned order stating that the excess payment was paid to the writ petitioner. No notice or opportunity was given to the writ petitioner before issuing the impugned order of recovery. Contrarily, recovery was imposed based on the inspection conducted by the Regional Joint Director of Treasury.

3.This being the factual position, this Court is of an opinion that absolutely there is no issue in respect of correcting the errors took place. In other words, the correction of errors are certainly permissible. However, in respect of recovery, the same cannot be imposed when it was paid to the employee at the instance of the employer. If any error took place regarding the fixation



of pay, the same can be corrected and the revised pay shall be paid. However, the amount already paid shall not be recovered in view of the fact that there was no misrepresentation on the part of the employee nor it was granted at the instance of the employee.

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4. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of **State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334** in 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.

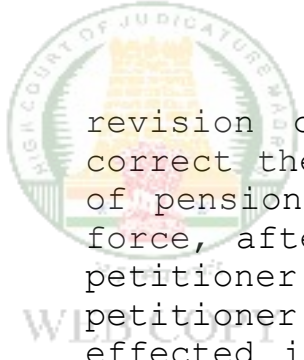
(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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 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. Thus, as per Paragraph 18(ii) of the judgment, recovery from the retired employees are impermissible. In view of the guidelines issued by the Apex Court of India, the recovery imposed on the writ petitioner is untenable.

6. The impugned order of recovery was issued without any notice and opportunity to the writ petitioner and therefore, the same is in violation of principles of natural justice. Further, there was no misrepresentation or otherwise on the part of the writ petitioner while granting revision of scale of pay and



revision of pension. Thus, the authorities are at liberty to correct the errors, if any, in the fixation of pay and re-fixation of pension in accordance with Government Orders and Pay Rules in force, after issuing show-cause notice and opportunity to the writ petitioner. However, the excess pay, if any, made to the writ petitioner cannot be recovered and the amount of recovery already effected is directed to be reimbursed, within a period of twelve weeks from the date of receipt of a copy of this order.

7. In this view of the matter, the impugned order issued by the respondent in R.C.No.156/B/2013, dated Nil.06/2013 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Sub Treasury Officer,
Aranthangi,
Pudukottai District.

AM

VB/SV/MMS/SAR3/13/03/2018/3P/2C

W.P. (MD) No.18757 of 2013
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