



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.4682 of 2013

and

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

M.Krishnan

... Petitioner

-vs-

1. The Principal Accountant General (A & E)
Tamil Nadu No.361, Anna Salai,
Chennai-600 018.
2. The Secretary to Government,
Finance (Pay Cell) Department,
Chennai-600 009.
3. The Secretary to Government,
Health and Family Welfare Department,
Chennai-600 009.
4. The Director of Public Health and Preventive Medicine,
DMS Campus,
Teynampet, Chennai-600 006.
5. The Treasury Officer,
District Treasury,
Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the first respondent in his letter No.Pen.30/1/1/-74/PCR CELL/DW/C278044/PH/2012-2013/20068 on 15.05.2012 and quash the same and consequently direct the first respondent to restore his original pension sanctioned by the first respondent by his order dated 05.01.2010 from the date of his retirement on 30.04.2008.

For Petitioner	: Mr.S.Govindan
For R1	: Mr.P.Gunasekaran
For R2 to R5	: Mrs.V.P.M.Vaishnavi, Government Advocate

**O R D E R**

The order of re-fixation and recovery issued by the first respondent vide proceedings, dated 15.05.2012 is under challenge in this writ petition.

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2.The learned counsel appearing on behalf of the writ petitioner states that the re-fixation and recovery was issued without issuing any show-cause notice and opportunity to the writ petitioner. This apart, the writ petitioner is a retired employee and pensioner, thus, the excess pay already granted cannot be recovered and further, there is no misrepresentation or otherwise on the part of the writ petitioner in respect of re-fixation of pay in accord with the Government Order in force.

3.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.

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.

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(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."

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. Thus, the respondents 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 first respondent in Letter No. Pen.30/1/1-74/PCR/CELL/DW/C278044/PH/2012-2013/20068, dated 15.05.2012 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

1. The Secretary to Government,
Finance (Pay Cell) Department,
Chennai-600 009.
2. The Secretary to Government,
Health and Family Welfare Department,
Chennai-600 009.
3. The Director of Public Health and Preventive Medicine,
Teynampet, Chennai-600 006.



4. The Treasury Officer,
District Treasury,
Dindigul.

+1cc to Mr.P.Gunasekaran, Advocate Sr.No.51763
+1cc to Spl.Government Pleader Sr.No.51644
+1cc to Mr.R.Rengaramanujan, Advocate Sr.No.51350

AM

VB/CVC/SAR2/13/03/2018/4P/8C

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