



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD) No.6361 of 2013
and
M.P (MD) Nos.1 & 2 of 2013

G.Sivakamu

... Petitioner

Vs

The Assistant Treasury Officer,
Collectorate Office,
Madurai-20.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the respondent in his proceedings Na.Ka.No.342/2013/K2 dated 26.03.2013 and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar

For Respondent : Mrs.V.P.M.Vaishnavi,
Government Advocate

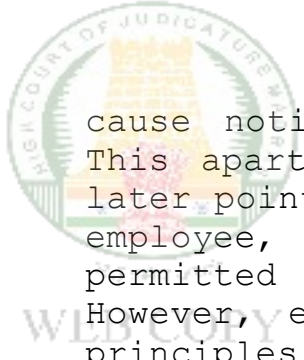
ORDER

The order of recovery, dated 26.03.2013, is under challenge in this writ petition.

2.The writ petitioner is a family pensioner and the excess payment in family pension is sought to be recovered by the respondent vide proceedings, dated 26.03.2013.

3.The learned counsel appearing on behalf of the petitioner states that the recovery order is a non-speaking order and was issued without show-cause notice and opportunity to the writ petitioner. This apart, the impugned order lacks reasoning and therefore, the same is liable to be set aside.

4.The writ petitioner being a family pensioner is not responsible for fixation and re-fixation of family pension in accord with the Government Order and Pay Rules in force. Thus, the recovery imposed on the writ petitioner without issuing show-



cause notice is in violation of principles of natural justice. This apart, the excess payment of pension even if found at the later point of time, the same cannot be recovered from the retired employee, so also the family pensioner. The authorities are permitted to refix the scale of pay and revision of pension. However, excess pay cannot be recovered in view of 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 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 this view of the matter, the order imposed passed by the respondent vide proceedings in Na.Ka.No.342/2013/K2, dated 26.03.2013 is quashed. The respondent is at liberty to correct the mistakes, if any occurred in respect of the revision of pension and family pension to the writ petitioner. The said correction has to be made after issuing show-cause notice and by providing an opportunity to the writ petitioner. If any amount is already recovered, the same is directed to be reimbursed, within a period of twelve weeks from the date of receipt of a copy of this order.



6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Assistant Treasury Officer,
Collectorate Office,
Madurai-20.

+ 1 cc TO M/S. Ajmal Associates , Advocate in SR No. 51360
+ 1 cc TO The Special Government Pleader in SR No. 51659

am

AE/JC/SAR2/12.03.2018/3P/4C

W.P (MD) No. 6361 of 2013
26.02.2018