



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM:

WEB COPY

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

W.P. (MD) No.9284 of 2013

and

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

and

W.M.P. (MD) No.8209 of 2016

R.Venkatachalam

... Petitioner

Vs.

1. The Additional Assistant Elementary
Education Officer,
Municipal Complex,
Asath Road,
Karur - 1.

2. The Treasury Officer,
District Treasury,
Karur District,
Karur.

... Respondents

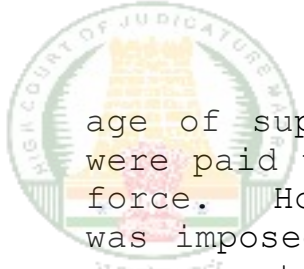
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the 2nd respondent from deducting a sum of Rs.41,668/- from the monthly pension of the petitioner in monthly installments without affording any opportunity of hearing to the petitioner and without conducting any enquiry as to the alleged the excess payment to the petitioner and further directing the 2nd respondent to refund the amount already deducted from the pension of the petitioner.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.R.Sethuraman
Special Government Pleader

O R D E R

The relief sought for in this writ petition is to forbear the second respondent from deducting a sum of Rs.41,668/- from the monthly pension of the petitioner in monthly instalments.



age of superannuation. The pension and the pensionary benefits were paid to the writ petitioner based on the Government Orders in force. However, based on certain audit objection, the recovery was imposed without even issuing any orders and without providing any opportunity to the writ petitioner.

3.The learned counsel for the writ petitioner states that even if there is an audit objection and no opportunity was provided to defend his case. Thus, the recovery was imposed from monthly pension of the writ petitioner is in violation of the principles of natural justice.

4.The learned Special Government Pleader appearing on behalf of the respondents states that the writ petitioner has given an undertaking in respect of the loss of recovery and therefore, the respondents have imposed the recovery from the monthly pension of the writ petitioner.

5.This Court is of an opinion that even in case of providing an undertaking by the pensioner, the competent authorities has to issue notice on receipt of the explanation from the writ petitioner and an appropriate order has to be passed on merits and in accordance with law ,if at all any excess amount is to be recovered. However, no such exercise was done in respect of the writ petitioner in this writ petition. This apart, the writ petitioner is a pensioner and even if any excess amount was paid, the same 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.

6. In view of the judgment of the Hon'ble Apex Court, the recovery of excess amount cannot be done from the retired employees. This apart, no notice or opportunity was provided to the writ petitioner. However, the competent authorities are at liberty to correct the revision of pension and scale of pay in accordance with the Government Orders and the pay rules in force. In other words, the correction of errors in fixation of pension is permissible and the excess payment if any cannot be recovered from the monthly pension.

7. In this view of the matter, the respondents are directed to not to recover any excess payment if at all paid to the writ petitioner and the excess amount already recovered is directed to be reimbursed within the period of 12 weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Assistant Elementary Education Officer,
Municipal Complex, Asath Road, Karur - 1.
2. The Treasury Officer,
District Treasury,
Karur District, Karur.

+ 1 cc TO Mr.B.Saravanan , Advocate in SR No. 55269
+ 1 cc TO The Special Government Pleader in SR No. 55136

mm

AE/JC/SAR3/20.04.2018/3P/5C