IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM
THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.11259 of 2008 and
M.P.No.1 of 2008

T.Parameswaran ...Petitioner

Versus

1.The Accountant General,
Accountant General Office
(Accounts and Entitlements),
Teynampet, Chennai-18.

2.Treasury Officer,
District Treasury Office,
Thanjavur. ... Respondents

Prayer: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the reduction of pensionary benefits of the petitioner as per the order of the 1st respondent in No.PO3/4/E64-1471/REV2007-2008/10468 and 10471 dated 29.12.2007 as null and void and consequently, directing the 1st respondent to withdraw the endorsement in his letters.

For Petitioner : Mr.A.R.Nixon

For 1st Respondent : Ms.T.S.Selvarani,
Standing Counsel

For 2nd respondent : Ms.M.Lalitha,
Government Advocate

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Declaration, declaring that the impugned order dated 29.12.2007 passed by the Accountant General, the 1st respondent herein as null and void since the same has been passed without hearing the petitioner and also without causing any show cause notice to the petitioner.

2. Learned Counsel for the petitioner submitted that while the petitioner was serving as an Assistant Treasury Officer at District Treasury Office, Thanjavur, he had opted for Voluntary Retirement and retired from service on 02.01.2006 and also drawing pension in PPO No.C 223146/TRY on and from 22.03.2006 through Treasury Officer, Thanjavur. At the time of his retirement, the petitioner was in the basic scale of Rs.6500-200-10500.

3. The learned Counsel for the petitioner further submitted that as per G.O.Ms.No.302 dated 07.07.2004, the Government Servants in Tamil Nadu retiring voluntarily shall be given weight age not exceeding 5 years subject to the condition that the total qualifying service rendered by Government Servants including weight age shall not in any case, exceeds 33 years and shall not be allowed to take his service beyond his normal date of superannuation as the case may be. As per the said Government Order, pensionary benefits were fixed and the petitioner is allowed to draw the pensionary benefits.

4. The learned Counsel for the petitioner also submitted that while so, all of a sudden, the 1st respondent without any notice and without giving any opportunity whatsoever to the petitioner informed the Treasury Officer on 29.12.2007 in Proceedings No. PO3/4/E64-1471/REV2007-2008/10468 and 10471, drastically revising the pensionary benefits in addition to passing an order of attachment of Rs.25,947/- as claimed excess gratuity and adjustable from the arrears of pension. Since the said impugned order was passed behind the back of the petitioner after his retirement without even seeking one line of explanation from the petitioner, the impugned order is liable to go, he pleaded.

5. In support of his case, the learned Counsel for the petitioner relied on a decision of the Hon'ble Supreme Court of India in State of Punjab and Others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases 334 wherein in paragraph 18, it has been held as follows:

> ''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 employee belonging to Class III and Class IV service (or Group C and Group D Service).

(ii) Recovery from the retired employee, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employee, 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. A counter affidavit has been filed by the 1st respondent.

7. Learned Counsel for the 1st respondent relying upon G.O.Ms.No.702, Finance (Pension) Department, dated 7.10.1988 which states that Government dues including overpayment of pension or family pension can be recovered from the Dearness Allowance or pension/family pension without the consent of pensioners, the impugned order is justified.

8. Heard the learned Government Advocate appearing for the 2nd respondent.

9. A perusal of the counter affidavit filed by the 1st respondent clearly shows the case of the petitioner that after the petitioner retired from service, the Treasury Officer, Thanjavur was informed for revision of pensionary benefits apart from passing an order of attachment of Rs.25,947/- showing as excess credit. Further, although the learned Counsel for the 1st respondent contended that as per G.O.Ms.No.702, Finance (Pension) Department, dated 7.10.1988 which states that Government dues including overpayment of pension or family pension can be recovered from the Dearness Allowance or pension/family pension without the consent of pensioners, the impugned order is justified, in the light of the ratio laid down by the Apex Court in State of Punjab and Others vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases 334 holding that the recovery from retired employees or the employees who are due to retire within one year, the order of recovery is impermissible in law, the impugned order of recovery is liable to be set aside. Accordingly, the impugned order dated 29.12.2007 passed by the Accountant General, the 1st respondent herein is set aside and the same is declared as null and void.

10. With the above declaration, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Accountant General,
Accountant General Office
(Accounts and Entitlements),
Teynampet, Chennai-18.

2.Treasury Officer,
District Treasury Office,
Thanjavur.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.12487
+1cc to the Government Pleader, S.R.No.12832

W.P.No.11259/2008

MP(CO)

rrs 15/03/2019