

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2019

CORAM

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

W.P.No.33555 of 2006

And

W.P.M.P.Nos.1 and 2 of 2006

G.Bakthavatchalu

... Petitioner

Vs

1.The Accountant General,
Accountant General Office,
Teynampet,
Chennai-18.

2.The District Treasury Officer,
The District Treasury Office,
Tiruvannamalai District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the letter returned by the second respondent dated 2.8.2006 and quash the same thereby forbearing the respondents from implementing the abovesaid letter dated 2.8.2006.

For Petitioner : Mr.A.R.Nixon

For Respondent-1 : Mr.V.Vijay Shankar

For Respondent-2 : Mrs.R.Janaki,
Additional Government Pleader.

ORDER

The order of recovery issued by the first respondent in proceedings dated 2.8.2006 is under challenge in the present writ petition.

2. The writ petitioner is a State Pensioner and receiving pension from 28.9.1987.

3. The learned counsel, appearing on behalf of the

writ petitioner, states that without any notice or opportunity, the pension amount was recovered from the monthly pension of the writ petitioner.

4. The writ petitioner submitted a representation on 2.8.2006 to restore the recovered amount to the District Treasury officer, Tiruvannamalai District. On receipt of the same, the Treasury Officer had made an endorsement in the very same representation, by stating that an excess amount of Rs.49,433/- had already been paid to the writ petitioner and the said excess amount has been identified during the audit and therefore the respondents have to recover the excess amount of pension already paid to the writ petitioner.

5. This Court is of an opinion that any order affecting the salary / pension has to be passed only by providing an opportunity to the writ petitioner. In the present case on hand, admittedly no notice was issued to the writ petitioner.

6. This apart, the writ petitioner is a retired Government Servant and receiving pension from the year 1987. Even if excess payment is made, the same cannot be recovered unless the writ petitioner had provided any undertaking or there is any misrepresentation on the part of the writ petitioner. In respect of the facts and circumstances of the case on hand, no such issues are raised nor established. Thus, the writ petitioner is entitled for the reimbursement of the recovered amount and in respect of the fixation of pension, the same shall be done in accordance with the Pay Rules/Government Orders in force. If any mistake is identified in respect of refixation of the pension, the same shall be corrected and the correct pension, as applicable to the writ petitioner, shall be paid. However, the excess payment, if any, paid, 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 {2015 (4) SCC 334}, wherein in paragraph 18 of its judgment, held as 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 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."

The Supreme Court in its order has categorically enumerated that the excess payment paid to the pensioners, cannot be recovered, even if it was erroneously paid.

7. The Apex Court, in clear terms, held that recovery of excess amount cannot be effected from the pensioners. This being the principles settled, the writ petition deserves to be considered. Accordingly, the impugned order passed by the first respondent in proceedings dated 2.8.2006 stands quashed and the respondents are directed to reimburse the recovered amount, within a period of twelve weeks from the date of receipt of a copy of this order. However, it is made clear that the error, if any, occurred in respect of revision of pay, the same shall be corrected by the Competent Authorities by providing an opportunity to the writ petitioner.

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

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Accountant General,
Accountant General Office,
Teynampet,
Chennai-18.

2.The District Treasury Officer,
The District Treasury Office,
Tiruvannamalai District.

+1cc to Mr. A.R.Nixon, Advocate, S.R.No. 657

+1cc to Mr. V.Vijay Shankar, Advocate, S.R.No. 587

W.P.No.33555 of 2006

KJ(CO)
GN(01/02/2019)



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