IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	13.11.2018
Orders prounced on	1.2.2019

CORAM
THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.2047 of 2011

T.Sundaramoorthy ...Petitioner

Vs.

1 The State of Tamilnadu
Rep. by its Secretary,
Finance (Pension Dept.),
Fort St. George, Chennai 600 009.

2 The Financial Adviser/Chief Accounts Officer,
Adi Dravidar Welfare Department,
Chepauk, Chennai 600 005.

3 The District Adi Dravidar Welfare Officer,
Villupuram District, Villupuram.

4 The Special Tahsildar,
Adi Dravidar Welfare Department,
Villupuram, Villupuram District.

5 The Accountant General
O/f Accountant General,
Teynampet, Chennai 600 018. ...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, declaring that the recovery of a sum of Rs.3,17,969/- from the DCRG in request of the petitioner is null and void on the ground that the respondents 2 and 3 have wrongly paid the excess payment while the petitioner was in service, and direct the respondents 2 and 3 to refund the attached amount along with the amount sanctioned as per the proceedings of the 5th respondent Accountant General, dated 1.9.2010 in No.AG (A & E) Pen.P09/3/Rev.2010-2011/ 20901619/GPO with 18% of interest from the date of his retirement.

For Petitioner : Mr.A.R.Nixon
For Respondents 1 to 4 : Mr.A.Zakir Hussain, G.A.
For Respondent No.5 : Mr.S.Balaji

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O R D E R

According to the petitioner, petitioner was working as Secondary Grade Teacher in Adi Dravidar Students hostel, Siruvanthadu, Villupuram and retired from service on 31.5.2008. On 21.5.2009, the second respondent sent a communication to the third respondent stating that by wrong fixation of salary, excess salary has been paid to the petitioner. On 8.2.2010, the third respondent sent a communication to the fourth respondent granting no audit objection for recovery of a sum of Rs.3,17,959/-. The Director of the Adi dravidar Welfare Department instructed the Special Tahsildar stating that the salary of the petitioner was wrongly fixed and paid from the year 1.6.1988 till February 2000 and instructed to amend the register as if the department has given Selection Grade from 1.6.1988 which he is not eligible. Accordingly, 4th respondent issued proceedings in Na.Ka.No.360/ 2010, dated 16.12.2010 for recovery of a sum of Rs.Rs.3,17,959/ from the terminal benefits of the petitioner and the same was deducted by the fourth respondent. According to the petitioner, without any notice or enquiry, recovery order has been passed after retirement. The petitioner was not served recovery order. Under coercion, signature was obtained in bond paper from the petitioner by the fourth respondent. Hence, the petitioner has filed the present writ petition for refund of the aforesaid amount.

2. In the counter affidavit filed by the fourth respondent, it is stated that the entire pension benefits were calculated till 31.5.2008 and the same was paid to the petitioner. He also denied that the petitioner was forced to give No Objection certificate. It is also stated that on 21.5.2009, the second respondent sent a communication regarding the payment of excess salary and instructed to deduct the same from the pensionary benefits of the petitioner. On receipt of the said letter, the petitioner has given No Objection Certificate on 25.1.2010. On 8.2.2010, the third respondent sent a letter to the fourth respondent to deduct a sum of Rs.3,17,959/- from the petitioner's pensionary benefits towards excess amount paid to the petitioner. The petitioner has voluntarily agreed to deduct the excess salary paid to the petitioner and thereafter, he approached this Court by filing the present writ petition, seeking direction to the respondents to refund the aforesaid amount. Therefore, the writ petition is liable to be dismissed.

3. In the counter affidavit filed on behalf of the fifth respondent, it is stated that in terms of G.O.Ms.No.207, dated 30.9.2008, revised pension proposals were forwarded to the 5th respondent by the fourth respondent. Based on the aforesaid G.O., revised pensionary benefits were fixed by the 5th respondent. The second respondent vide his letter No.E2/32880/08, dated 12.1.2010 ordered recovery of

Rs.3,17,959/- from the retirement benefits of the petitioner. The recovery represents excess payment of pay and allowances by erroneous pay fixation i.e. Rs.2,98,570/- and deduction on account of irregularities committed during his tenure i.e. Rs.19,389/-, totally a sum of Rs.3,17,959/- had been recovered by the fourth respondent from and out of the DCRG payable to the petitioner. Further, it is also submitted by the fourth respondent that as per Note 1 of Rule 70 of the Tamil Nadu Pension Rules, the expression "ascertainable Government dues" includes inter alia over-payment of pay and allowances. As per Proviso to Rule 9 of the said Rules, in case, there is any pecuniary loss caused to the Government, the Government shall have the right of ordering recovery from the pension or DCRG of the whole or part of the pecuniary loss caused by misconduct or negligence.

4. Heard the learned counsel for the petitioner, learned Government Advocate appearing for the respondents 1 to 4, learned counsel for the 5th respondent and perused the materials available on record.

5. In terms of G.O.Ms.No.207 issued by School Education Department, dated 30.9.2008, revised pension proposal was forwarded to the 5th respondent. The second respondent noticed that pay and allowances in respect of the petitioner were wrongly fixed and excess amount has been paid to the petitioner and the same was communicated to the third respondent vide letter No.E2/32880/08, dated 21.5.2009. By letter No.E2/32880/08, dated 12.1.2010 the second respondent issued No audit objection to the third respondent for recovery of a sum of Rs.3,17,959/- from the retirement benefits of the petitioner and thereafter, recovery proceedings was initiated against the petitioner.

6. The petitioner has given no objection certificate to the fourth respondent on 25.1.2010 and thereafter only, recovery proceedings was initiated against the petitioner by the third respondent by letter No.M3/18347/2008, dated 8.2.2010 and the same was communicated to the petitioner. But, the petitioner has filed the present writ petition on 21.1.2011. There is a delay of one year in filing the present writ petition before this Court. The petitioner has not placed any materials to prove the allegation in the affidavit that the respondent had forced the petitioner to execute bond stating that the petitioner has no objection for deduction of a sum of Rs.3,17,959/- from the retirement benefits of the petitioner. In support of his submission, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in STATE OF PUNJAB VS. RAFIQ MASIH [AIR 2015 SC 696]. In the instant case, the recovery has been given effect to, only after the No objection certificate given by the petitioner. Further,

there is no explanation for the delay of nearly one year, in filing the writ petition and the allegations found in the affidavit. Further, petitioner has not established before this Court that the recovery made by the respondent is illegal and against the provisions of law. It is clear from the fact that the allegation is only an afterthought and there is no material placed before this Court to substantiate the allegation that the respondent has obtained "No objection Certificate" in the bond paper from the petitioner by coercive method. On the contrary, the respondent has stated that the petitioner has given No objection certificate to deduct the excess amount paid to the petitioner. In such view of the matter, the contention of the petitioner cannot be accepted and the same is rejected. Therefore, there is no merit in the writ petition.

In view of the foregoings, the writ petition cannot be entertained and accordingly, the writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Finance (Pension Department),
Fort St.George,
Chennai - 600 009.

2.The Financial Adviser/Chief Accounts Officer,
Adi Dravidar Welfare Department,
Chepauk,
Chennai 600 005.

3.The District Adi Dravidar Welfare Officer,
Villupuram District, Villupuram.

4.The Special Tahsildar,
Adi Dravidar Welfare Department,
Villupuram, Villupuram District.

5.The Accountant General
O/f Accountant General,
Teynampet,
Chennai 600 018.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.9043
+1cc to Mr.S.Balaji, Advocate, S.R.No.8578
+1cc to the Government Pleader, S.R.No.9138

VSNII(CO)

rrs 26/02/2019.