

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 30.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No.34964 OF 2005
and
W.P.M.P.No.37908 of 2005

R. GNANAMBIGAI ... petitioner

Vs

THE SUB TREASURY OFFICER
KALLAKURICHI VILLUPURAM DISTRICT. ...Respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records connected with the impugned order in Pro.Na.Ka.No.2371/05/A4 dated 10.8.2005 of the respondent and quash the same and direct the respondent to restore the petition original family pension that was paid prior to the issue of the impugned order.

For petitioner : Mr.A.Baskaran
For respondents : Mr.G.B.Rajesh,
Government Advocate

O R D E R

The order of recovery dated 10.8.2005 is under challenge in this writ petition.

2. The writ petitioner is a family pensioner and her husband was appointed as a teacher in Middle School on 17.11.1947 and thereafter, promoted to the post of Headmaster on 21.4.1972. Husband of the writ petitioner reached the age of supernnauation and retired from service on 31.8.1982. Husband of the petitioner was drawing retirement pension till the age of his death on 4.6.2003. Subsequently, the petitioner is receiving family pension. The revision of family pension was done based on the Government order in force. The writ petitioner being a family pensioner, there was no misrepresentation in respect of revision of family pension granted in her favour by the competent

authority. However, recovery was imposed unilaterally based on the audit objections. The learned counsel for the petitioner states that no opportunity was given to the writ petitioner even to submit her objections in respect of the recovery imposed. Audit objections was raised by stating that there was an excess payment of family pension.

3. This court is of the opinion that the family pension was granted to the petitioner pursuant to the Government order and at the instance of the establishment of the respondent. Even if any excess amount is paid, the same cannot be recovered from the family pensioner, in view of the legal principles settled by the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Rafiq Masih, (2015 (4) SCC 334).

4. This court had an opportunity to deal with similar case in W.P.No.17880 to 17888 of 2016 dated 13.08.2018. The relevant paragraphs are extracted hereunder :-

7. However, the learned Special Government Pleader appearing on behalf of the respondents is unable to dispute the fact that the impugned order of recovery has been issued after issuing a show cause notice and providing an opportunity to the writ petitioners. Thus, the impugned order of recovery is in violation of the principles of natural justice. This apart, the fixation of pay and salary has been paid by the Establishment of the 3rd respondent and the writ petitioners cannot be held responsible for erroneous fixation of pay or the excess payment. The writ petitioners are serving as Group IV Employees and therefore, the recovery of excess salary if any, cannot be done in view of the legal principles settled by the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. In view of the legal principles settled by the Apex Court in this regard, the excess amount if any paid cannot be recovered from the writ petitioner. However, the arrears or mistakes in the fixation of pay, can be corrected as per the Audit objections. Thus, the fixation of pay can be corrected as per the Government orders and pay rules in force. However, the excess payment already paid to the writ petitioners cannot be recovered and if any amount has already recovered, the same is to be reimbursed to the writ petitioner.

5. In view of the settled legal principles, the impugned recovery is impressible and accordingly, the order passed by the respondent in proceeding No.Pro.Na.Ka.No.2371/05/A4 dated 10.8.2005 is quashed and the respondent is directed to reimburse the recovered amount, if any, to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, the writ petition stands allowed. No costs. Consequently, WPMP No.37908 of 2005 is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
THE SUB TREASURY OFFICER
KALLAKURICHI
VILLUPURAM DISTRICT.

+1cc to Mr. A.Baskaran, Advocate, S.R.No.8548
+1cc to the Government Pleader, S.R.No.8190

W.P.No.34964 of 2005

Kak(20/03/2019)

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