

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-02-2019

CORAM

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

W.P.No.5187 of 2019

And

W.M.P.No.5895 of 2019

T.M.Kumaraswami

.. Petitioner

- Vs. -

1.The Secretary to Government,
Finance (P.C.) Department,
Fort St. George,
Secretariate,
Chennai-600 009.

2.The Director of Treasuries and Accountant,
Chennai-600 015.

3.The Principal Accountant General (A&E),
Teynampet,
Chennai-600 018.

4.The Pension Paying Officer,
Pension Paying Office,
Nandhanam,
Chennai-600 035.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order in proceeding Na.Ka. No.8668/2018/M1 dated 12.12.2018 of the fourth respondent, The Pension Paying Officer, Pension Paying Office, Nandhanam, Chennai-600 035 and quash the same.

For Petitioner : Mr.K.Thennan

For Respondents-1,2&4: Mrs.P.Rajalakshmi,
Additional Government Pleader.

For Respondent-3 : Mr.V.Vijay Shankar

O R D E R

The order of recovery dated 12.12.2018, issued by the fourth respondent, is under challenge in the present writ petition.

2. The writ petitioner entered into service initially as a Teacher and subsequently promoted as a Professor and thereafter, retired from service on 30.11.1984, on attaining the age of superannuation.

3. The pension as well as the revision of pension is being granted to the writ petitioner as per the Government Orders and the Pay Rules in force. Periodical revision of pensions were granted to the writ petitioner for the past many years with reference to the Pay Commission implementations. Suddenly, without any notice and opportunity to the writ petitioner and based on the audit objections, the impugned order of recovery has been issued stating that an excess pension was granted to the writ petitioner and based on the audit objections, the same is sought to be recovered.

4. This Court is of an undoubted opinion that any order affecting the pensionary rights of a State pensioner must be issued only after issuing a show cause notice and providing an opportunity to the pensioner concerned. There is no whisper about the issuance of any show cause notice or providing any opportunity to the writ petitioner in the impugned recovery order.

5. This apart, the writ petitioner is aged about 93 years old and even if any excess amount of pension is paid, the same cannot be recovered now after the lapse of many years. However, the authorities competent are empowered to correct the pension in accordance with the Government Orders and the Pay Rules in force.

6. The legal principles in this regard are well settled in the case of State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334], wherein the Hon'ble Supreme Court held in paragraph-18, 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."

7. The Apex Court held that in case of excess amount of pay paid to the pensioners, the same cannot be recovered even if the payment is made erroneously by the State. In the present case on hand, the writ petitioner is a pensioner and the revision of pension was effected not based on any misrepresentation and therefore, the excess payment made to the pensioner, cannot be recovered.

8. However, it is made clear that the respondents are at liberty to correct the revision of scale of pay as well as the revision of pension in accordance with the Government Orders as well as the Pay Rules in force.

9. With the abovesaid liberty, the impugned order of recovery passed by the fourth respondent in proceedings Na.Ka. No.8668/ 2018/M1 dated 12.12.2018 is quashed and the respondents are directed to correct the scale of pay, if there is any mistake or otherwise in respect of revision of pension as applicable to the writ petitioner.

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

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Secretary to Government,
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Chennai-600 035.

+1cc to Mr.K.Thennan , Advocate SR.No. 16875

+1cc to Mr.V.Vijay Shankar , Advocate SR.No. 17516

+1 CC TO GOVERNMENT PLEADER SR.NO. 18199

A.SK(20/03/2019)

WP 5187 of 2019

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