IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-02-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 3552 of 2018

K.Lakshmanan ...Petitioner

Vs

The Asst. Treasury Officer
O/o.Sub Treasury Anthiyur
Anthiyur Taluk
Erode District. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified to call for the records of the respondent in Na.Ka.No.375A1/2017 dated 18.12.2017 and quash the same as illegal and arbitrary.

For Petitioner : Mr.K.Jayaraman.

For Respondent : Mr.P.Rajalakshmi

O R D E R

The order of recovery dated 18.12.2017 issued by the respondent is under challenge in the present writ petition.

2. The writ petitioner was appointed as a Secondary Grade Teacher-Physical Education Teacher and retired from service on 03.05.1996, on attaining the age of superannuation. The writ petitioner was receiving pension and his pension was revised based on the Government Orders in force. However, the respondent/Assistant Treasury Officer passed the impugned order in proceeding dated 18.12.2017 stating that an excess pension was paid to the writ petitioner over and above his eligibility. The excess amount was identified, based on the audit objections. Thus, the writ petitioner is liable to repay the excess amount disbursed in his favour by the authorities concerned.

3. The learned counsel for the petitioner states that the order of recovery was issued without even issuing show cause

notice and opportunity to the writ petitioner. This apart, the writ petitioner is a pensioner aged about 80 years and therefore recovery at this point of time will affect his normal livelihood and accordingly, the writ petition is to be allowed.

4. The learned Additional Government Pleader appearing on behalf of the respondent contended that the respondent is empowered to recover the excess payment, if any, paid to the pensioner. In the present case on hand, the audit party found that an excess amount was paid to the writ petitioner. Therefore, the order of recovery is issued and there is no infirmity as such.

5. This Court is of an opinion that undoubtedly, the errors if any in respect of fixation of pay or revision of pension is to be corrected by the Competent Authorities. In the event of identifying any errors in fixation of pay or pension, the Competent Authorities are bound to correct the same in accordance with the pay rules and with reference to the Government Orders in force. However, the excess payment if at all paid to the pensioner cannot be recovered after a lapse of many years. In view of the principles laid down by the Hon'ble Supreme Court of India in the case 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."

6. In the present case on hand, there is no misrepresentation or otherwise on the part of the writ petitioner. In view of the fact that revision of pension was granted on account of the fixation done by the Competent Authorities, the excess payment that was paid cannot be recovered, in view of the legal principles settled in the judgment cited supra. Accordingly, the impugned order passed by the respondent in Na.Ka.No.375A1/2017 dated 18.12.2017 is quashed. However, the respondents are at liberty to correct the scale of pay and pay the applicable pension to the writ petitioner as per the rules in force.

With these directions, writ petition stands allowed. No costs

ssb/pkn

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Asst. Treasury Officer
O/o.Sub Treasury Anthiyur
Anthiyur Taluk
Erode District.

+1cc to Mr.Jayaraman, Advocate, S.R.No.11472
+1cc to the Government Pleader, vide S.R.No.11904

W.P.No.3552 of 2018

Kak(18/03/2019)