IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7494 of 2019
and WMP.No.8161 of 2019

K.R.Manickam ... Petitioner

-Vs-

The Pension Pay Officer
Pension Pay Office,
Chennai - 600 035. ... Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certioraified Mandamus, calling for the records relating to the proceedings of the respondent in Na.Ka.No.601039/2018/Q1, dated 12.12.2018 and quash the same and thereby direct the respondent not to initiate any recovery proceedings in the petitioner's pension in P.P.O.No.A601039.

For petitioner : Mr.A.R.Nixon

For Respondents: Mr.A.N.Thambi Durai
Special Government Pleader

ORDER

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

2. The writ petitioner is a retired Teacher and allowed to retire from service on 31.07.1990 from Municipal Higher Secondary School, Gobichettypalayam, Erode District. The writ petitioner is receiving pension for the past about 28 years and at present he is aged about 86 years. At this length of time, the respondent issued the impugned order stating that excess payment of pension had already been disbursed in favour of the petitioner and the same was traced out during the Audit Objections. Accordingly, the writ petitioner is directed to repay the excess amount paid to him.

3. The learned counsel for the writ petitioner states that no notice or opportunity was given to the writ petitioner before passing the impugned order.

4. This Court is of the considered opinion that any order effecting the rights of the employees are to be passed only after providing an opportunity and after receiving explanations from the employees concerned.

5. Even, in case of any excess payment found during the audit objections, the same cannot be recovered after a lapse of many years in the absence of any misrepresentation or otherwise on the part of the retired employee is concerned. In the present case, the fixation of pay and pension was done by the establishment of the respondent and therefore, the excess payment already 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 & 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 view of the above principles, the excess payment cannot be recovered from the retired employees. However, the respondents are at liberty to correct the admissible pension as per Pay Rules and as per the Government Orders in force.

7. Accordingly, the impugned order passed in proceedings Na.Ka.No.601039/2018/Q1 dated 12.12.2018 is quashed. The respondents are directed to correct the scale of pay as well as the revision of pension and pay the correct pension as per Rules in force. However, the excess payment already made cannot be recovered.

8. Accordingly, the present writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

mp/pns
To

The Pension Pay Officer
Pension Pay Office,
Chennai - 600 035.

+1 CC to Mr.A.R.Nixon, Advocate sr 32908.

W.P.No.7494 of 2019
and WMP.No.8161 of 2019

MR(CO)
SP(06/05/2019)