IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18486 and 18487 of 2018
and
W.M.P.No.21812 of 2018

D. Arumugam ...Petitioner in both W.P's

Vs.

1. The Internal Audit Officer,
   Pension, Audit Branch,
   TANGEDCO,
   No.144, Anna Salai,
   Chennai - 600 002.

2. The Internal Audit Officer,
   F.25/Computer Section,
   Audit Branch, TANGEDCO,
   No.144, Anna Salai,
   Chennai- 600 002.

3. The Superintending Engineer,
   Vidhunagar Electricity,
   Distribution Circle,
   Virudhunagar,
   Virudhunagar District. ...Respondents in both W.P.s

Prayer in W.P.No. 18486 of 2018: The writ petition was filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to Lr.No.007647/161/F.8/F.82/2018 dated 27.04.2018 of the 1st respondent quash the same and direct the respondents to release the deduction made in the petitioner's pension in the pension payment of May 2018 and June 2018 with interest calculated at 12% from the date of recovery upto date of payment.

Prayer in W.P.No. 18487 of 2018: The writ petition was filed under Article 226 of the Constitution of India, to issue a Writ of declaration, declaring that recovering a sum of

Rs.20,854/- from the pension paid for the months of August 2013 to October2013 is illegal and unsustainable consequently direct to refund the same with interest calculated at 12% from the date of recovery till the date of payment.

(In both the petitions)

For Petitioner	:	Mr.Y.Ramanaiah
For Respondents	:	Mr.P.R.Dhilip Kumar Standing Counsel for TNEB.

O R D E R

The relief sought for in both the writ petitions are to issue a Writ of declaration, declaring that recovering a sum of Rs.20,854/- from the pension paid for the months of August 2013 to October2013 is illegal and unsustainable consequently direct to refund the same with interest calculated at 12% from the date of recovery till the date of payment and to call for the records relating to Lr.No.007647/161/F.8/F.82/2018 dated 27.04.2018 of the 1st respondent and quash the same and direct the respondents to release the deduction made in the petitioner's pension in the pension payment of May 2018 and June 2018 with interest calculated at 12% from the date of recovery upto date of payment.

2. The learned counsel for the writ petitioner in the present writ petitions stated that the writ petitioner was employed as Assistant Accounts Officer and retired from service on 30.05.2006 on attaining the age of Superannuation. On account of certain audit objection, the impugned order of recovery has been issued by the first respondent in proceeding dated 27.04.2018.

3. The learned counsel for the respondents stated that an opportunity had already been provided to the writ petitioner, before passing the impugned order of recovery. The writ petitioner also had submitted his representation on 22.02.2018 to recover the excess amount. Thus, the excess amount paid to the writ petitioner was recovered, though, the impugned order was passed by the respondent in proceedings dated 27.04.2018.

4. This Court is of the considered opinion that even in case of the excess payment erroneously made, the respondent cannot recover the same from the writ petitioner after his retirement, as the writ petitioner retired from service in the year 2006 and the impugned order is passed in the year 2018, after a lapse of 12 years from the date of retirement of the writ petitioner.

5. In this regard the Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334 and held that in respect of Group-II employees, the correction of errors in respect of revision is permissible. However, recovery in respect of Group-III and IV employees are impermissible and in paragraph No.18 of the judgment is relevant and the same 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 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 legal principles settled by the Hon'ble supreme Court of India, it is clear that in respect of excess payment to the Government Employees, the same cannot be recovered from the retired employees. This being the factum the order stands quashed and accordingly these writ petitions are allowed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

7. The respondents are directed to reimburse the amount already deducted from the writ petitioner within a period of 12 weeks from the date of receipt of the copy of this order .

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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   Virudhunagar District.

+1cc to Mr.S.Elamurugan, Advocate sr.36196
+1cc to Mr.P.R.Dhilip Kumar, Advocate sr.36651

W.P.Nos.18486 and 18487 of 2018
and
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br(co)
nr 24/06/2019