IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 26244 of 2018
and
W.M.P.No.30483 of 2018

A.Krishnan ..petitioner

Vs

1. The Government of Tamil Nadu
Rep by its Secretary
Higher Education Department
Fort St.George, Chennai - 9.

2. The Commissioner of Technical Education
Chennai - 600 025.

3. The Accountant General (A & E)
Office of the Accountant General
361, Anna Salai, Chennai - 18.

4. The Treasury Officer
(Full Additional In-Charge)
District Treasury, Coimbatore - 18. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th Respondent in Proceeding Na.Ka.No.005239/2017/T1 dated 23.02.2017 and quash the same and consequently direct the Respondents herein to pay monthly pension without any reduction including the service of 6 years 1 month and 1 day at Government College of Technology Coimbatore for calculating pensionary benefits.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.Kathirvelu
Special Government Pleader
for R1 & R2

M/s.P. Rajalakshmi
Additional Government Pleader
for R4

O R D E R

The order of recovery dated 23.02.2017 is sought to be quashed in the present writ petition. The writ petitioner was appointed as Associate Lecturer in the Government College of Technology Coimbatore. The writ petitioner voluntarily retired from service on 08.08.1977 and thereafter, received pension for the past about 20 years. Surprisingly, the impugned order of recovery has been issued stating that an excess amount of pension has been paid to the writ petitioner and during the audit objection, the excess payment was identified.

2. The learned counsel for the writ petitioner states that no Show Cause Notice or opportunity was provided to the writ petitioner before issuing the impugned order of recovery. This apart, the writ petitioner has not misrepresented his case for grant of excess payment of pension
or otherwise. In the absence of any misrepresentation on the part of the writ petitioner, the impugned order cannot be sustained by the respondents.

3. The learned Additional Government Pleader appearing on behalf of the 3rd respondent is unable to establish that the Show Cause Notice was issued before issuing the impugned order of recovery. This apart, the fact remains that the writ petitioner voluntarily retired from service during the year 1997 and is receiving pension and revised pension, as per the fixation done by the establishment section of the respondents. Thus, there is no misrepresentation or otherwise on the part of the writ petitioner in the matter of grant of pension or revised pension as per the Government orders.

4. Even in case of any refixation of pension, the excess amount, if any, paid cannot be recovered from the pensioner. The fixation are done by the authorities competent and there is no misrepresentation or otherwise on the part of the petitioner. Such being the case, the excess amount cannot be recovered. However, the refixation, if any, can be corrected by the authorities and accordingly, the pension shall be revised prospectively, as per the Government orders in force. In the decision 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, 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.

5. In view of the principles laid down, excess payment available, if any, paid erroneously by the establishment, the same cannot be recovered from the petitioner after a lapse of many years.

6. This being the principles to be followed, the writ petition deserves to be considered. Accordingly, the following orders are passed.

(i) The impugned order passed by the 4th respondent in proceedings Na.Ka.No.005239/2017/T1, dated 23.02.2017 stands quashed.

(ii) The respondents are directed to correct the fixation of pension after issuing a Show Cause Notice to the writ petitioner and pay the correct pension as applicable to the writ petitioner, with reference to the orders in force and as per the rules.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb/kmm

To

1. The Government of Tamil Nadu
   Rep by its Secretary
   Higher Education Department
   Fort st.George, Chennai - 9.

2. The Commissioner of Technical Education
   Chennai - 600 025.

3. The Accountant General (A & E)
   Office of the Accountant General
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4. The Treasury Officer
   (Full Additional In-Charge)
   District Treasury, Coimbatore - 18.

+1 cc to M/s.Muthumani Doraisami,Advocate Sr.No.25790
+1 cc to Government Pleader,Sr.No.26296 & 26289

W.P.No. 26244 of 2018

pm(co)
mp(20/05/2019)