

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2019
CORAM
THE HON'BLE DR.JUSTICE S.VIMALA
W.P.No.29717 of 2018
and W.M.P.Nos.34672 & 34673 of 2018

V.Rangasamy Petitioner

Vs

1.The Treasury Officer
District Treasury Office, Namakkal.

2.The Principal Accountant General (A&E)
Teynampet, Chennai 600 018. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the first respondent pertaining to order in Na.Ka.No.09/2018/B1 dated 16.07.2018 and to quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader-for R1
Mr.Vijayashankar, Standing Counsel - for R2

ORDER

This writ petition has been filed seeking to quash the order dated 16.07.2018, by which a sum of Rs.5,96,146/- is sought to be recovered from the monthly pension of the petitioner, at the rate of not more than one third of the pension, commencing from the month of 8/2018 at Rs.4630/- in 128 installments and 129th installment of Rs.3506/-.

2. Learned counsel for the petitioner would rely upon the Government Order dated G.O.Ms.No.286 Finance (Pension) Department, which is based on the order of the Honourable Supreme court. Paragraph 3 of the Government Order reads as follows.

"3.The Hon'ble Supreme Court while observing that 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 has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

- i. Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service)
- ii. Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- iii. Recovery from 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."

3. Pointing out this, the learned counsel for the petitioner would submit that it is impermissible for the authorities to effect any recovery, since the petitioner belongs to Grade 'D' services, in the post of Office Assistant. Learned counsel for the petitioner would also submit that the representation dated 21.09.2018 for the petitioner has not been considered at all. In the representation, the petitioner would state that the respondents to act only based upon the judgment of the Supreme Court and the consequent Government Order in G.O.Ms.No.286 Finance (Pension) Department dated 28.08.2018 and therefore his representation should be considered in the light of G.O.Ms.No.286. As his representation was not considered, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner submits that though the petitioner has claimed relief of quashment, however, the petitioner would be satisfied if the representation of the petitioner dated 21.09.2018 is considered by the respondents. In such view of the matter, without going into the merits of the issue, the respondents are directed to consider the representation of the petitioner dated 21.09.2018 in the light of G.O.Ms.No.286 dated 28.08.2018, as also the order passed by the Supreme Court and pass orders thereon, within a period of eight weeks from the date of receipt of a copy of this order. With the above directions, the writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

avr / kst

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

To

1. The Treasury Officer
District Treasury Office, Namakkal.
 2. The Principal Accountant General (A&E)
Teynampet, Chennai 600 018.
- +1 CC TO GOVERNMENT PLEADER SR.NO. 517
+1cc to Mr.M.Ravi , Advocate SR.No. 446

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A.SK(07/02/2019)