



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.19996 of 2015

and

M.P.(MD) No.1 of 2015 & W.M.P.(MD) No.3246 of 2016

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V.Ramachandran

... Petitioner

vs.

1. The Director of Treasuries
DMS Complex
Panagal Buildings, Saidapet
Chennai-600 015

2. The Treasury Officer
District Treasury, Collector's Complex
Madurai-625 020

3. The Assistant Treasury Officer
Sub-Treasury, Peraiyur
Madurai-625 703

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the second respondent i.e., the Assistant Treasury Officer, Sub-Treasury, Peraiyur, Madurai District relating to Na.Ka.No.Nil, dated 15.10.2015 and quash the same.

For Petitioner : Mr.S.Visvalingam

For Respondents: Mr.S.Dhayalan

Government Advocate

O R D E R

The order of recovery, dated 15.10.2015, issued by the second respondent, after a lapse of more than 25 years from the date of retirement of the writ petitioner, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the writ petitioner was serving as Additional Block Development Officer in Sedapatti, Madurai District and retired from service on 31.08.1990 on attaining the age of superannuation. The order of recovery was issued based on the audit objection and after a lapse of more than 25 years from the date of retirement of the writ



petitioner from service. This apart, no notice or opportunity was given to the writ petitioner before issuing the order of recovery. Thus, the impugned order of recovery is in violation of the principles of natural justice.

3. This Court is of the considered opinion that even in case of any erroneous payment, the same cannot be recovered, after a lapse of many years, that too without issuing any show-cause notice or opportunity to the employee concerned. This apart, there was no misrepresentation on the part of the writ petitioner while fixing the scale of pay by the respondent / Establishment. The respondents are empowered to correct the scale of pay, if any mistake occurred. However, recovery of the excess payment already made cannot be recovered, in view of the legal principles settled by the Apex Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, reported in (2015) 4 SCC 334. The relevant paragraph 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."

4. In the present case on hand, the writ petitioner was



allowed to retire from service on 31.08.1990, the impugned order of recovery was issued in the year 2015 and there was no misrepresentation on the part of the writ petitioner while fixing the scale of pay by the respondent / Establishment. Under these circumstances, this Court passes the following orders:

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- i. The writ petition is allowed.
- ii. The impugned order in Na.Ka.No.Nil, dated 15.10.2015, passed by the second respondent is quashed.
- iii. The respondents are directed to reimburse the amount, if any already recovered from the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.
- iv. The respondents are directed to correct the mistakes in the scale of pay or revision of pension in accordance with the Government Orders as well as the Pay Rules in force.
- v. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Director of Treasuries,
DMS Complex, Panagal Buildings,
Saidapet, Chennai-600 015.
2. The Treasury Officer,
District Treasury, Collector's Complex,
Madurai-625 020.
3. The Assistant Treasury Officer,
Sub-Treasury, Peraiyur, Madurai-625 703.

+1cc TO M/S.S.VISVALINGAM, Advocate, Sr.No.69137

+1cc To M/S. SPECIAL GOVERNMENT PLEADER, Sr.No.69268

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and

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