BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.20620 of 2015
and
M.P.(MD)Nos.1 of 2015 and 3244 of 2016

Rajagopal ... Petitioner

-Vs-

1.The Accountant General,
Government of Tamil Nadu,
Chennai-18.

2.The Assistant Treasury Officer,
Peraiyur, Madurai District.

3.The District Educational Officer,
Usilampatti, Madurai District. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.143/2015/A1 dated 15.10.2015 and quash the same as illegal and consequently, direct the second respondent to refund the deducted payment in the month of October, 2015 for a sum of Rs.1,000/- to the petitioner.

For Petitioner : Mr.RM.Arun Swaminathan

For R1 : Mr.P.Gunasekarn

For R2 and R3 : Mrs.S.Srimathy,
Special Government Pleader.

ORDER

The order of recovery issued by the second respondent in proceeding dated 15.10.2015 is under challenge in the present Writ Petition.

2.The writ petitioner was employed as Post Graduate Assistant Teacher and retired from service on 31.08.1990 on attaining the age of superannuation. The pay fixation was done at the instance of the respondent establishment and there was no misrepresentation or otherwise on the part of the writ petitioner, regarding the fixation of pay as well as the revision of pension. However, the impugned order of recovery was issued by the second respondent on the basis of the audit objections raised by the audit party. It is stated that the pension was paid excessively and accordingly, excess amount is sought to be recovered.

3.This Court is of the considered opinion that even in case of excess payment from the retired employee, the same cannot be recovered after a lapse of many years. However, the error or mistake, if any occurred in the fixation of pay and revision of pension, the same can be corrected and the pension as applicable with reference to pay rules is to be disbursed in favour of the pensioner.

4.The legal principles are already settled by the Hon'ble Supreme Court of India, in the case of ***State of Punjab Vs. Rafiq Maish*** reported in ***(2015) 4 SCC 334***, 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 herein above, we may, as a ready reference, summarise 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."*

5.The writ petitioner is aged about 83 years at the time of filing of this Writ Petition and in this age, recovery would undoubtedly affect the livelihood of the writ petitioner. The writ petitioner has to meet his medical expenses during the old age and this apart, as per the principles laid down by the Hon'ble Supreme Court of India, such recovery is impermissible from the retired employee.

6.This being the factum, the impugned order passed by the second respondent in Na.Ka.No.143/2015/A1, dated 15.10.2015 is quashed. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

/ True Copy /

Sub Assistant Registrar(CS-)

Myr

To

1.The Accountant General,
Government of Tamil Nadu,
Chennai-18.

2.The Assistant Treasury Officer,
Peraiyur, Madurai District.

3.The District Educational Officer,
Usilampatti, Madurai District.

+1 CC to M/s.P.GUNASEKARAN, Advocate(SR-70168[F] dated 20/06/2019)
+1 CC to M/s.RM.ARUN SWAMINATHAN, Advocate
(SR-70259[F] dated 20/06/2019)
+1 CC to M/s.SPL GP (SR-70462[F] dated 21/06/2019)

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ES/04.07.2019/3P/7C