

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 19.06.2019****CORAM:****WEB COPY****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.21133 of 2015**

N.Surendran (Died)

1.L.Geetha

2.Greesma

... Petitioners

(Petitioners 1 and 2 impleaded vide Court order dated 19.06.2019 in W.M.P. (MD) No.10178 of 2019)

-Vs-

1.The Assistant Elementary Educational Officer,
Munchirai-629 171,
Kanyakumari District.2.The Principal Accountant General,
(A+E) Tamil Nadu,
Anna Salai, Chennai-600 018.

...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 to the proceedings in Na.Ka.No.729/A/2014, dated 12.05.2015 of the first respondent, quash the same and consequently, direct the first respondent to refund Rs.3,05,259/- paid by the petitioner.

For Petitioners : Mr.M.Saravanakumar
For R1 : Mrs.S.Srimathy,
Special Government Pleader.
For R2 : Mr.P.Gunasekarn

ORDER

The order of recovery dated 12.05.2015 issued by the first respondent is sought to be quashed.

2.The writ petitioner was employed as a Middle School Headmaster and retired from service on 31.03.2015. The impugned order of recovery has been issued on the ground that excess payments were made to the writ petitioner and audit objections were raised by the Accountant General of Tamil Nadu. Thus, the authorities competent revised the pay and pension and accordingly, imposed recovery with reference to the excess payment made to the writ petitioner.



3. The learned counsel appearing on behalf of the writ petitioner states that no notice or opportunity was given to the writ petitioner.

4. The learned Special Government Pleader appearing on behalf of the first respondent unable to establish that any such notice or opportunity provided to the writ petitioner before issuing the impugned order of recovery. Thus, the impugned order is in violation of the principles of natural justice.

5. Admittedly, the writ petitioner is an retired employee. Thus, the principles enunciated by the Hon'ble Supreme Court of India in the case of **State of Punjab Vs. Rafiq Maish** reported in **(2015) 4 SCC 334**, are to be applied. The relevant paragraph of the said Judgment 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).

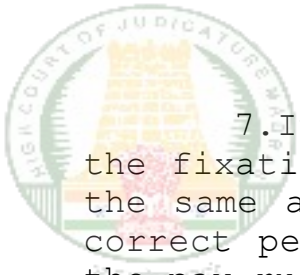
(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(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."

6. In view of the fact that the writ petitioner is a pensioner and the writ petitioner passed away during the pendency of the writ petition, excess amount cannot be recovered from the



7.It is made clear that if any error or mistake occurred in the fixation of payment or revision of pension or family pension, the same alone can be corrected by the competent authorities and correct pension / family pension is to be paid with reference to the pay rules and the Government Orders in force.

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8.This being the factum, the following orders are passed:-

"1.The impugned order of recovery passed by the first respondent in Na.Ka.No.729/A/2014, dated 12.05.2015 is quashed.

2.The errors if any with reference to the fixation of pay as well as the family pension, the same alone can be corrected with reference to the pay rules and the Government Orders in force."

9.With these directions, this Writ Petition stands allowed.
No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Myr
To

1.The Assistant Elementary Educational Officer,
Munchirai-629 171,
Kanyakumari District.

2.The Principal Accountant General,
(A+E) Anna Salai, Chennai-600 018.

+1CC TO M/S.M.MUTHU PANDI, ADVOCATE,SR NO.70208
+1CC TO M/S.P.GUNASEKARAN, ADVOCATE,SR NO.70162
+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No.70461

W.P (MD) No.21133 of 2015
19.06.2019
(2/2)

BUC (28/06/2019) 3P/6C