BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.14376 of 2017
and
W.M.P(MD)No.11258 of 2017

R.Narayanan ... Petitioner

Vs.

1.The Treasury Officer,
District Treasury, Madurai.

2.The Assistant Treasury Officer,
Sub-Treasury, Melur,
Madurai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the second respondent ie., the Assistant Treasury Officer, Melur, relating to the impugned letter No.nil, dated 30.05.2017 and quash the same and consequently, direct the second respondent to refund the amount already recovered from the petitioner from the month of May, 2017.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Angappan,
Government Advocate.

ORDER

The recovery, after retirement is sought to be challenged in the Writ Petition.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The case of the Petitioner is that he lastly served as Selection Grade BT Assistant in the Bharathiar Corporation High School and retired from service on attaining the age of superannuation and received his pension. While so, without any notice or providing any opportunity, the second respondent has recovered a sum of Rs.17,026/- from the month of May, 2017 from his monthly pension. When it was questioned, the second respondent, vide letter, dated 30.05.2017, stated that the petitioner has received excess payment towards pension amounting to Rs.3,46,170/-. According to the petitioner, the recovery of the alleged excess payment from his monthly pension by the second respondent is arbitrary, illegal and against the principles of natural justice. Hence, the Petitioner has come forward with the present Writ Petition, for the relief stated supra.

4.This Court, by order, dated 02.08.2017, has granted an order of interim stay with regard to recovery of the alleged excess payment from the petitioner's monthly pension.

5.The learned counsel for the petitioner relying upon the reported judgment in the case of ***State of Punjab and others .vs. Rafiq Masih (White Washer) and others reported in (2015) 4 Supreme Court Cases, 334,*** which stipulates the mode of recovery and opposing the stand taken by the respondents, sought to quash the proceeding issued by the second respondent.

6.The learned counsel for the Petitioner further brought the notice of this Court to the order of this Court made in ***W.P(MD) No.2647 of 2014, dated 19.08.2016*** in the case of ***D.Susairaj vs. The District Treasury Officer, Perambalur and another,*** wherein, this Court at paragraph 10, it is held as follows:

> *''10.Even though it has been claimed, by the first respondent, that the Petitioner had given his consent for recovery, the said consent cannot be taken into serious consideration, as the Petitioner had raised objections against the recovery, in his representations made to the authority concerned. It is also clear from the decision of the Supreme Court, made in State of Punjab and others .vs. Rafiq Masih(White Washer) and others reported in (2015) 4 SCC 334 that no recovery can be made from a retired employee.''*

7.Such an issue was also considered by the Division Bench of this Court in W.A(MD)No.638 of 2012, dated 12.03.2018, in the case of ***the Executive Engineer, Public Works Department,(Machinery Sub-Division)Chennai-5 and another .vs. P.Karuppaiah,*** wherein, at para 4, it is held as follows:

> *''4.In the instant case, the Writ Court noted that without issuing notice to the respondent/Writ Petitioner, recovery was sought to be effected and it is not sustainable as it amounts to violation of principles of natural justice. In such circumstances, the Court would have remand the matter to the authorities for fresh consideration giving them liberty to issue show cause notice. We are to take a decision as to whether such course has to be adopted in the present appeal. The legal position as pointed out in the aforementioned decision leads to a conclusion that the*

respondent/Writ Petitioner is liable to make good the excess payment received by him, in the light of the undertaking. However, in the peculiar facts and circumstances of the case, the Petitioner having retired from service, the recovery of the excess amount of around Rs.20,000/-(Rupees twenty thousand only) shall not made.''

8.The Division Bench of this Court in ***Tamil Nadu Civil Supplies Corporation, represented by its Managing Director, No.12, Thambusamy Road, Kilpauk, Chennai-600 010 and another .vs. P.Ganesha Rao*** and in yet another case in W.A.No.207 of 2019, dated 24.01.2019, has passed an order on the same lines, which affirms that there shall not be any recovery and at paragraph Nos.5 to 8, it is held as follows:

''5.The learned counsel for the appellants would strenuously contend that the judgement of the Honourable Supreme Court in Rafiq case(cited supra) should not be applied, because the writ Petitioner/respondent himself has consented for recovery of the amount and once he has consented the government was completely at liberty to withhold the amount. He submitted that Rafiq's case (cited supra) will not be applicable, where the retired employee consented to the recovery of the amount, which has been paid in excess to him.

6.We are afraid that the said argument can hold water. There is nothing in the said judgement, which would state that if the employee consents, then the employer is at liberty to withhold such amount. The law laid down by the Honourable Supreme Court in Rafiq's case(cited supra) categorically states there cannot be any recovery from a retired employee. No amount of consent by a retired employee would permit the employer to withhold any amount. The law laid down by the Honourable Supreme Court is binding on all.

7.As per Article 141 of the Constitution of India, the law declared by the Honourable Supreme Court is binding on all Courts within the territory of India. The said judgement of the Rafiq's case(cited supra) is bind, which categorically states that there can be no recovery from a person, who has retired.

8.During the course of the arguments, G.O.Ms.No.286, Finance(Pension) Department, dated 28.8.2018 was brought to our notice. A perusal of the said Government Order would show that the Government has implemented the above said decision and issued a Government Order.''

9.The learned Government Advocate appearing for the respondents submitted that the petitioner himself has already given consent for such recovery and hence, he cannot now go back from his own submissions. However, he has not objected to the decisions relied on the side of the petitioner.

10.Following the aforesaid decisions, the impugned order passed by the second respondent, dated 30.05.2017 stands quashed. Any recovery so far made before passing an order of interim stay, be refunded to the petitioner within a period of eight weeks from the date of receipt of a copy of this order, failing which, the same will carry interest at 6% p.a from the date of recovery made till the date of payment. The respondents are also directed to fix the eligible pension to the petitioner and pay, if not fixed earlier.

11.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Treasury Officer,
District Treasury, Madurai.

2.The Assistant Treasury Officer,
Sub-Treasury, Melur,
Madurai District.

+1 CC to M/s.S.VISVALINGAM, Advocate in SR-56203

W.P(MD)No.14376 of 2017
25.03.2019

ps
PK/13.05.2019 : 4P/4C