BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **17.10.2019**
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.1039 of 2019
and
C.M.P.(MD)No.9524 of 2019

1.The State Regional Joint Director,
Treasuries and Accounts Department,
Tirunelveli.

2.The Treasury Officer,
Kalkulam at Thuckalay,
Kanyakumari District. ... Appellants/Respondents

Vs.

Aseerwatham ... Respondent/petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order on 30.11.2018 passed in W.P.(MD)No.23781 of 2018.

Prayer in WP(MD). 23781/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus, to direct the 1st respondent to dispose of the petitioner representation dated 18.05.2018 or any other orders as this Honourable Court may deem fit and proper in the circumstances of the case.

For Appellants : Mr.A.K.Baskara Pandian
Special Government Pleader
For Respondent : Mr.G.Cenil

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.K.Baskara Pandian, learned Special Government Pleader for the appellants and Mr.G.Cenil, the learned counsel for the respondent. By consent on either side, this writ appeal is taken up for final disposal.

2. The State Regional Joint Director, Treasuries and Accounts Department and the Treasury Officer, Kalkulam at Thuckalay are the appellants in this appeal. The appellants are aggrieved by the order and direction issued by the learned writ Court in a writ petition filed by the respondent in W.P.(MD)No.23781 of 2018, dated 30.11.2018.

3. The respondent sought for a direction upon the first appellant to dispose of his representation, dated 18.05.2018. In the said representation , the respondent objected to re-fixation of his pension and consequential recovery. During the pendency of the writ petition, since no interim orders were granted, a sum of Rs.70,000/- had already been recovered from the pension paid to the respondent. The learned single Bench by the impugned order held that ordering of recover from an employee would be an order sustainable, on account of long lapse of time and it will be inequitable to recover the alleged excess payment of pension from the respondent. In this regard, the learned writ Court followed the decision in the case of ***State of Panjap and others Vs. Rafiq Masith (Whiter Washer) and others [2015 (4) SCC 344].***

4. In paragraph 8 of the impugned order, the learned Single Bench has directed the appellants to consider the respondent's case in the light of the decision in the case cited supra after giving opportunity to the respondent. The Court also fixed time limit, within which the orders have to be passed.

5. The learned Special Government Pleader appearing for the appellants submitted that the appellants are not aggrieved by the directions issued in the writ petition, but they are aggrieved by the finding rendered in paragraph 6 of the impugned order, wherein the learned writ Court has made an observation not to reduce the pension amount of the respondent / writ petitioner. The appellants would state that at the time of retirement, the respondent's pension is Rs.1,443/- and the pension was paid regularly and revised pensions were also paid from time to time. The pension payable to the respondent was refixed at Rs.4,275/- with effect from 01.01.2006 with monetary benefits from 01.03.2011 vide proceedings of the Tahsildar, Kalkulam Taluk, Kanyakumari District dated 27.08.2012.

6. It appears that the Regional Joint Director of Treasuries and Accounts Department, Tirunelveli District, the first appellant, conducted an inspection during 2017 and found that the selection Grade Village Administrative Officer was not eligible for the pay scale of Rs.9,300/- - Rs.34,800/- - G.P. Rs.4,200/-. Therefore, the department came to the conclusion that pension fixation of RS.4,275/- was wrong and the correct pension is Rs.3,588/- and consequentially the excess payment of Rs.1,41,138/- should be recovered.

7. Admittedly, prior to effecting recovery or calling upon the respondent to remit the excess amount vide proceedings, dated 22.03.2018 no notice was given to the respondent / writ petitioner. Therefore, the learned writ Court was fully right in holding that there has been violation of principles of natural justice. In our considered view, the decision in White Washer's case will not be applicable to the facts of the case on hand. It is not an order of recovery simply sitter after a long lapse of time. This is the case, where there has been wrong fixation of pension resulting in excess payment.

8. It is pointed out by the learned Special Government Pleader that at the time of superannuation, every employee gives an undertaking in terms of the Madras Financial Code declaring that if pension sanctioned is later found to be in excess of the amount actually entitled, they will refund the excess pension. Considering the facts of the case, we are of the view that the following directions will meet the ends of justice:-

(a) This writ appeal is allowed and the observation made by the learned writ Court, that the pension shall not be reduced, is set aside and the appellants are directed to issue show cause notice to the respondent / writ petitioner clearly stating as to under what ground they seek to refix the pension.

(b) The respondent should be granted sufficient time to submit his objections and after considering the objections, orders shall be passed on merits and in accordance with law within a period of three months from the date on which, objections were submitted by the respondent / writ petitioner.

(c) We direct that the excess amount of Rs.1,14,138/-, already paid shall not be recovered from the respondent / writ petitioner.

(d) As it is stated that more than Rs.70,000/- had already been recovered, we direct the appellants, first to re-credit the amount to the petitioner's pension account, before issuing show cause notice.

(e) The respondent / writ petitioner is entitled to raise all his contentions to justify that the pension should not be refixed.

9. With the above direction, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The State Regional Joint Director,
Treasuries and Accounts Department,
Tirunelveli.

2.The Treasury Officer,
Kalkulam at Thuckalay,
Kanyakumari District.

+1 CC to Mr.G.CENIL, Advocate (SR-92842[F] dated 18/10/2019)

+1 CC to SPL GP (SR-93087[F] dated 18/10/2019)

ORDER MADE IN
W.A.(MD)No.1039 of 2019
17.10.2019

VB(06.11.2019) 4P 5C