



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.22186 of 2017

K.Subburam

.. Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai - 600 004.

2.The Superintendent of Police,
Viruthunagar District.

3.The Principal Accountant General (A & E),
361, Anna Salai,
Chennai - 600 018.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the 1st respondent to consider the petitioner's representation which was filed before him on 22.08.2017 by the petitioner to refund the recovery amount deducted from the Petitioner's pension Rs.17,866/-.

For Petitioner : Mr.A.Rajaram

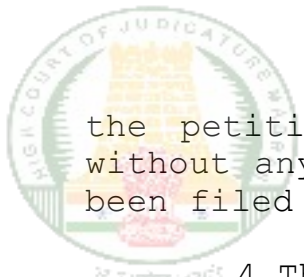
For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

ORDER

This writ petition has been filed seeking a direction to the first respondent to refund the recovered amount, deducted from the petitioner's pension to the tune of Rs.17,866/-, based on the petitioner's representation 22.08.2017.

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

3.The learned counsel appearing for the petitioner submitted that the petitioner had last served as a Special Sub Inspector of Police under the third respondent. After retirement, the second respondent deducted a sum of Rs.17,886/- from the monthly pension of



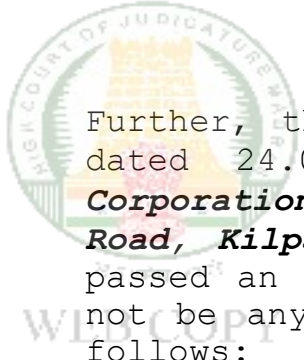
the petitioner, which is illegal, since the amount was deducted without any notice to the petitioner. Hence, this writ petition has been filed to refund the recovered amount.

4. The learned counsel for the petitioner relied upon a 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. The learned counsel further relied upon the order passed by this Court in **W.P (MD) No. 2647 of 2014, dated 19.8.2016 [D. Susairaj v.s. The District Treasury Officer, Perambalur and another]**, wherein, 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'

5. The learned counsel for the petitioner also submitted that such an issue was considered by the Division Bench of this Court in **W.A (MD) No. 638 of 2012, dated 12.3.2018**, in the case of **the Executive Engineer, Public Works Department, (Machinery Sub-Division) Chennai-5 and another .vs. P. Karuppaiah**, wherein, at paragraph No. 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 be made.'



Further, the Division Bench of this Court in W.A.No.207 of 2019, dated 24.01.2019 in the case of **Tamil Nadu Civil Supplies Corporation, represented by its Managing Director, No.12, Thambusamy Road, Kilpauk, Chennai-600 010 and another vs. P.Ganesha Rao**, has passed an order on the same lines, which affirms that there shall not be any recovery and in 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.

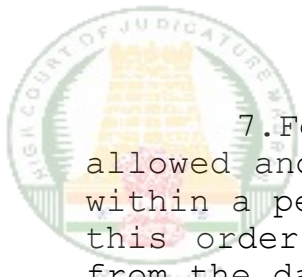
7.As per Article 141 of the Constitution of India, the law declared by the Honourable Supreme Court is binding on all Courts within the territory of India. The said judgement of the Rafiq's case(cited supra) is bind, which categorically states that there can be no recovery from a person, who has retired.

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.'

Thus, the learned counsel sought appropriate direction to the respondents.

6.Heard the learned Additional Government Pleader appearing for the respondents, who has no objection in granting such relief to the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>



7. Following the aforesaid orders, this writ petition is allowed and any recovery so far made, 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. No costs.

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Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar (CS)

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To

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Kamarajar Salai,
Mylapore, Chennai - 600 004.

2. The Superintendent of Police,
Viruthunagar District.

3. The Principal Accountant General (A & E),
361, Anna Salai,
Chennai - 600 018.

+1 CC to M/s. SPL GP (SR-56560[F] dated 26/03/2019)

+1 CC to M/s. A. RAJARAM, Advocate (SR-56344[F] dated 25/03/2019)

W.P (MD) No. 22186 of 2017
25.03.2019

ES/KK/15.04.2019/4P/6C