BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 22.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP(MD)No.2909 of 2016 and
WMP(MD)Nos.2567, 2568 and 13111 of 2016

N.Govindaraj ... Petitioner

Vs

1.The Secretary to Government,
Finance (Pay Cell) Department,
Fort St George,
Chennai - 600 009.

2.The Tahsildar,
Elayankudi - 630 702.

3.The Assistant Treasury Officer,
Illayankudi,
Sivagangai District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent i.e., the Assistant Treasury Officer, Ilayangudi in his Kaa.Mu.A78/A1/2015 dated 25.11.2015 and quash the same and consequently direct the third respondent to refund the amount already recovered from the petitioner's pension within a specified time frame that may be fixed by this Court.
[Prayer amended vide order dated 18.04.2017
made in WMP (MD)No.13110 of 2016]

For Petitioner :Mr.Visvalingam
For Respondents :Mrs.S.Srimathy,
Special Government Pleader

ORDER

The recovery made after retirement of the petitioner, is challenged in this 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 retired as Special Grade Village Administrative Officer on 31.03.2001. He was receiving pensionary benefits from his date of retirement. While so, the third respondent by proceedings in Na.Ka.No.A6/20/12, dated 03.02.2012, directed the petitioner to remit the excess payment made to him, due to wrong fixation of pay. The above said proceedings were issued without giving any opportunity to the petitioner, in order to submit his explanation. Further, as per the impugned proceedings dated 25.11.2015,the third respondent started recovering the alleged excess payment from his monthly pension, which is arbitrary, illegal and against the principle of natural justice. Hence, the petitioner has come forward with the Writ Petition, for the relief stated supra.

4.This Court, by order, dated 06.04.2017, 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 reportted in (2015) 4 SCC 334,*** which stipulates the mode of recovery and opposing the stand taken by the respondents, sought to quash the proceedings issued by the third respondent.

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

> *''10.Even though it has been claimed, by the third 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 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 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 affirm 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 Special Government Pleader appearing for the respondents submitted that the petitioner himself had 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 third respondent, dated 25.11.2015, stands quashed. If any recovery was made, before grating 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 pension eligible to the petitioner, if not fixed earlier, and pay the same to him.

11.With the above directions, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Finance (Pay Cell) Department,
Fort St George,
Chennai - 600 009.

2.The Tahsildar,
Elayankudi - 630 702.

3.The Assistant Treasury Officer,
Illayankudi,
Sivagangai District.

+1 CC to Mr.S.VISVALINGAM, Advocate SR-55873.

WP(MD)No.2909 of 2016
22.03.2019

CS: (20/06/2019) 4P 5C