BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.06.2019
CORAM:

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P.(MD)No.3406 of 2016
and
W.M.P.(MD)No.3005 of 2016

K.Kalimuthu ... Petitioner

Vs.

1.The Accountant General (A & E) Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

2.The Treasury Officer,
District Treasury,
Virudhunagar District.

3.The Assistant Treasury Officer,
Sub-Treasury, Srivilliputhur,
Virudhunagar District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent *i.e.*, the Assistant Treasury Officer, Sub-Treasury, Srivilliputhur, relating to Na.Ka.3234-2016-A1, dated 09.02.2016, quash the same and consequently, direct not to effect any recovery.

For Petitioner : Mr.S.Visvalingam
For R1 : Mr.P.Gunasekaran
Standing Counsel
For R2 & R3 : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

This Writ Petition has been filed seeking to quash proceedings of the third respondent in Na.Ka.No.3234-2016-A1, dated 09.02.2016 and consequently, to direct him not to effect any recovery.

2.The case of the petitioner is that lastly he served as Livestock Inspector Special Grade - I in the Animal Husbandry Department under the control of Assistant Director of Animal Husbandry, Srivilliputhur, and he was allowed to retire peacefully from service on 30.04.2002 with maximum qualifying service and his pension was sanctioned vide order dated 15.04.2002. While so, all of a sudden, the third respondent sent a Letter dated 24.07.2015, to the petitioner, directing him to pay a sum of Rs.1,02,348/- on the ground that the Account General, Chennai, has objected for re-fixation of his pension from Rs.9,410/- to Rs.10,500/-. Challenging the same, the petitioner has already filed W.P.(MD)No.13875 of 2015 before this Court. This Court, by order dated 07.08.2015, set aside the impugned order on the ground that no notice was issued calling upon the petitioner to submit his explanation and directed the third respondent herein to issue prior notice to the petitioner and after receiving any objection/reply, from the petitioner, pass appropriate orders. After the above said order, the third respondent obtained explanation from the petitioner and passed the present impugned order re-fixing and reducing the petitioner's monthly pension from Rs.10,500/- to Rs.9,410/-. Challenging the said order, this Writ Petition has been filed, seeking the abovesaid relief.

3.The learned counsel for the petitioner submitted that no recovery can be made after retirement, that too after a lapse of 14 years from the date of retirement. In support of his contention, the learned counsel relied upon a 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 also relied upon a judgment of a Division Bench of this Court in the case of ***The Special Officer Vs. S.Kadiresan*** reported in ***(2014) 8 MLJ 385***, wherein also, it is held that no recovery can be made after retirement. Therefore, following the said decisions, the order passed by the third respondent, dated 09.02.2016, is liable to be quashed.

4.The learned counsel for the petitioner also brought to the notice of this Court the order of this Court made in ***W.P(MD)No.2647 of 2014, dated 19.8.2016,*** in the case of ***D.Susairaj v.s. The District Treasury Officer, Perambalur and another,*** wherein, this Court at Paragraph 10, has 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.Such an issue was also 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, in 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.''

6.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.

7.The learned Standing Counsel appearing for the first respondent submitted that the petitioner already retired from service and the pension amount of the petitioner was wrongly fixed and in order to rectify the same, the impugned order is passed and therefore, the same does not require any interference by this Court. Apart from that, the learned Standing Counsel appearing for the first respondent submitted that the impugned order will not stand in the way of the first respondent to re-fix the scale of pay of the petitioner.

8.In response to the above said submission, the learned counsel for the petitioner submitted that the respondents have already passed an order of re-fixation of pension as per revised pay commission.

9.The learned Additional Government Pleader appearing for the respondents 2 and 3 reiterated the stand taken by the learned Standing counsel appearing for the first respondent.

10.Considering the facts and circumstances of the case and having regard to the submissions made on either side and also following the above said decisions, the impugned order passed by the third respondent in Na.Ka.No.3234-2016-A1, dated 09.02.2016, stands quashed.

11.At this juncture, the learned counsel appearing for the petitioner submitted that the respondents may be directed to refund the amount, if any, recovered from the petitioner. The learned Standing Counsel appearing for the first respondent has strongly objected for refund of the said amount by relying upon the orders passed by this Court. Therefore, the petitioner is at liberty to approach the concerned authority and make a representation and place the judgments of this Court, for refund of the amount, if any. If any such representation is received, the authority concerned shall pass appropriate orders, within a period of four weeks from the date of receipt of such representation.

12.The Writ Petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Accountant General (A & E) Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

2.The Treasury Officer,
District Treasury,
Virudhunagar District.

3.The Assistant Treasury Officer,
Sub-Treasury, Srivilliputhur,
Virudhunagar District.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-71581[F] dated 26/06/2019)

+1 CC to M/s.SPL GP (SR-71779[F] dated 27/06/2019)

+1 CC to M/s.P.GUNASEKARAN, Advocate (SR-72107[F] dated 28/06/2019)

W.P.(MD)No.3406 of 2016
26.06.2019

SMN2
JM/30.07.2019/5P-7C