BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON	ORDERS PRONOUNCED ON
18.06.2019	18.07.2019

CORAM

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P(MD)No.1636 of 2018 and
WMP(MD).No.1726 of 2018

S. Shanmugam ...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 this Court to issue a Writ of Certiorari calling for the records of the second respondent i.e., the Assistant Treasury Officer, Sub Treasury, Melur, relating to the impugned letter No.Nil, dated 05.01.2018 and quash the same.

For Petitioner :Mr.S. Visvalingam

For Respondents : Mr. Aayiram K. Selvakumar
Additional Government Pleader

ORDER

This writ petition has been filed seeking to quash the Letter of the second respondent Nil, dated 05.01.2018.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3. The case of the Petitioner is that lastly he served as Secondary Grade Teacher in the Government Higher Secondary School, Thiruvathavur, Melur Taluk, Madurai District and he retired from

service on 31.08.1993, on attaining the age of superannuation. While so, the second respondent sent the impugned letter No.Nil, dated 05.01.2018, to the petitioner directing him to pay a sum of Rs.2,51,684/- towards recovery. Challenging the same, this writ petition has been filed, seeking the above said relief.

4. The learned counsel for the petitioner submitted that no recovery can be made after retirement, that too after a lapse of fifteen 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 orders passed by the second respondent,_dated 03.08.2017 is liable to be quashed. The learned counsel further added that the petitioner has no objection for re-fixation of the monthly pension and he is challenged only the recovery proceedings.

5. The learned counsel for the Petitioner also brought the notice of this Court to 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''*

6. 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.''

7. The Division Bench of this Court in W.A.No.207 of 2019, dated 24.1.2019, (***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 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.''

8. The learned Additional Government Pleader appearing for the second respondent submitted that the pay of the petitioner was wrongly fixed in the scale of pay of the Secondary Grade Teacher and in order to rectify the same, the impugned order is passed and therefore, the same do not require any interference by this Court. However, he has not objected to the decisions relied on the side of the petitioner.

9. 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 second respondent No. Nil, dated 05.01.2018 stand quashed. 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. However, it is open to the respondents to proceed with re-fixation of monthly pension in future in accordance with law, after affording an opportunity of hearing to the petitioner, if not already done.

10. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)

trp

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 (SR-76063[F] dated 18/07/2019)

order made in
W.P(MD)No.1636 of 2018 and
WMP(MD).No.1726 of 2018
18.07.2019

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