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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)Nos.9564, 9565 & 9566 of 2016
and
W.M.P(MD)Nos.7608, 7609, 7610, 12260, 12277 of 2016
and 3142 of 2017

S.P.Muthuraman ... Petitioner in W.P(MD) No.9564/2016

M.Kanagasabapathy ... Petitioner in W.P(MD)No.9565/2016

K.Jeyaprakash ... Petitioner in W.P(MD)No.9566/2016

Vs.

1.The Tahsildar,
Devakottai – 630 302.

2.The Assistant Treasury Officer,
Devakottai, Sivagangai District. ... Respondents in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the second respondent ie., the Assistant Treasury Officer, Devakottai relating to his ந.க.எண்.982/2014/A, dated 12.07.2016 and quash the same and consequently, direct the second respondent to refund the amount already recovered from the petitioners' pension within the specified time fixed by this Court.

(Cause-title amended vide order dated 25.03.2019 made in W.M.P(MD)Nos.12259, 12275 & 12276 of 2016)

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.S.Angappan, Government Advocate.

COMMON ORDER

The recovery, after retirement, is sought to be challenged in these Writ Petitions.

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

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3.The case of the petitioners is that before retirement, they lastly served as Special Grade Village Administrative Officer, Village Administrative Officer and Village Administrative Officer respectively in various places and retired from service on attaining the age of superannuation and received their retiral benefits. While so, the second respondent by proceedings, dated 12.07.2016, directed the petitioners to remit their excess payment stating that pay fixation has been done wrongly. The above said proceedings were issued without giving opportunity to the petitioners to submit their explanation. Further, the second respondent recovered the alleged excess payment from their monthly pension, which is arbitrary, illegal and against the principles of natural justice. Hence, the petitioners have come forward with these Writ Petitions, for the relief stated supra.

4.This Court, by order, dated 27.09.2016, has granted an order of interim stay with regard to recovery of the alleged excess payment from the petitioners' monthly pension.

5.The learned counsel for the petitioners relying upon the 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 and opposing the stand taken by the respondents, sought to quash the proceedings issued by the second respondent.

6.The learned counsel for the Petitioners further brought the notice of this Court to the order of this Court made in ***W.P(MD) No.2647 of 2014, dated 19.08.2016*** in the case of ***D.Susairaj vs. The District Treasury Officer, Perambalur and another,*** wherein, this Court 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.''*

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 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*

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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.''

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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 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.

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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.''

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9.The learned Government Advocate appearing for the respondents submitted that the petitioners themselves have already given consent for such recovery and hence, they cannot now go back from their own submissions. However, he has not objected to the decisions relied on the side of the petitioners.

10.Following the aforesaid decisions, the impugned orders passed by the second respondent, dated 12.07.2016 stand quashed. Any recovery so far made before passing an order of interim stay, be refunded to the petitioners 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 eligible pension to the petitioners and pay, if not fixed earlier.

11.With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Tahsildar,
Devakottai - 630 302.

2.The Assistant Treasury Officer,
Devakottai, Sivagangai District.

+3 CC to M/s.S.VISVALINGAM, Advocate SR. Nos.56200, 56201 & 56202.

W.P(MD)Nos.9564, 9565 & 9566 of 2016
25.03.2019

CS: (04/06/2019) 4P 6C