



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.10067 of 2014

and

M.P.[MD]No.1 of 2014

WEB COPY

M.Kandasamy

... Petitioner

Vs.

1.The Treasury Officer,
District Treasury,
Theni,
Theni District.

2.The Additional Treasury Officer,
District Treasury,
Theni,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to ந.க.எண்.3989/2014/பி நாள் .29.05.2014 of the first respondent namely the Treasury Officer, District Treasury, Theni, Theni District and quash the same and consequently direct the respondents to refund the amount of Rs.6,735/- already recovered from the pension of the petitioner within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents 1 & 2 : Mr.K.Mu.Muthu

Additional Government Pleader

O R D E R

The order of recovery dated 29.05.2014, recovering the excess amount from the writ petitioner is under challenge in the present writ petition.

2.The petitioner was working as Health Inspector Grade- I in the Government Primary Health Centre, Veerapandi, Theni District and retired from service on attaining the age of superannuation with effect from 31.05.2006. The pension was fixed by the respondent as per the Government orders and the pay Rules in force. There was no misrepresentation otherwise on the part of the writ petitioner at the time of fixation of pension. However, the Treasury Officer suddenly issued the impugned order stating that the audit objection



was raised with reference to the excess payment of pension to the writ petitioner and therefore, the said excess amount is to be recovered.

3.Learned Additional Government Pleader appearing on behalf of the respondents states that prior intimation was issued to the writ petitioner by letter dated 29.05.2014. Thus, the writ petitioner cannot say that no notice was issued before issuing the impugned order of recovery.

4.This Court is of the considered opinion that correction of mistakes in respect of the scale of pay is permissible. In case of any error in fixation of pension, the said mistake can be corrected by the competent authority. However, the excess payment paid to the retired employees cannot be recovered after a lapse of many years. The impugned recovery order issued after a lapse of seven years directing to recover the excess payment already disbursed in favour of the writ petitioner cannot be made in view of the legal principles settled in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334**.

"18.It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."



5. In view of the fact that the writ petitioner is a retired employee and a pensioner, the respondents are directed to correct the scale of pay and fix the pension strictly in accordance with the pay rules as well as the Government orders in force. However, excess payment already made in favour of the writ petitioner cannot be recovered from the writ petitioner. In this view of the matter, the impugned order passed by the first respondent in dated 29.05.2014 is quashed.

6. Accordingly, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

MR

To

1. The Treasury Officer,
District Treasury,
Theni, Theni District.

2. The Additional Treasury Officer,
District Treasury,
Theni, Theni District.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-80537[F] dated
08/08/2019)

+1 CC to M/s.SPL GP (SR-81155[F] dated 09/08/2019)

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MR

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