BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD)No.1040 of 2014
and
M.P(MD)Nos.1 & 2 of 2014

Mookiah ... Petitioner

Vs.

1.The Principal Accountant General,
Office of the Accountant General,
No.361, Anna Salai, Chennai-18.

2.The District Treasury Officer,
Madurai, Madurai District.

3.The Assistant Treasury Officer,
Peraiyoor, Madurai District. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.686/2013/A1/dated 16.12.2013 passed by the Respondent No.3 and quash the same as illegal and consequently directing the Respondent No.3 not to deduct any amount from the petitioner's pension amount for the alleged wrongful calculation in which the petitioner is no way responsible.

For Petitioner	:	Mr.K.A.Thirumalaiappan
For R1	:	Mr.P.Gunasekaran
For R2	:	Mr.D.Muruganandham Additional Government Pleader

ORDER

The order of recovery, dated 16.12.2013, is under challenge in the present writ petition.

2. The Assistant Treasury Officer passed the impugned order stating that on account of the erroneous fixation of pay, excess amount of pension was paid to the writ petitioner. Thus, the order of recovery was issued to recover the excess amount calculated and paid to the writ petitioner.

3.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is a pensioner and therefore, the recovery is impermissible. The writ petitioner states that there was no misrepresentation on the part of the writ petitioner and therefore, the revision of pension was fixed as per respondent, for which, the writ petitioner cannot be penalised.

Undoubtedly, the revision of pay was fixed erroneously and excess pension was issued as per the impugned order.

4. However, the learned counsel appearing on behalf of the first respondent submitted a copy of the declaration signed by the writ petitioner. A form of declaration provided under Article 920 (I) C.S.R clearly states that the writ petitioner has promised to realise no objection to such revision. It is further promised that to repay any of amount advanced to the writ petitioner was in excess. Thus, at the time of receiving the revision of pension, the petitioner had executed an undertaking that in the event of any audit objection or in the event of excess payment, he will repay the said excess payment. The Supreme Court categorically held that in the event of any misrepresentation or any undertaking by the employee in respect of the recovery of the excess payment, they they are liable to pay excess amount to the State exchequer.

5. This being the legal principles settled, this Court is of the considered opinion that the writ petitioner had executed a form of declaration wherein he promised that he will repay the excess amount if any identified by in future. This being the factum, the writ petitioner is not entitled for any relief and the respondents are bound to recover the excess amount paid to the petitioner, which is a taxpayer money and accordingly, the recovery is to be completed.

6. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Accountant General,
Office of the Accountant General,
No.361, Anna Salai, Chennai-18.

2.The District Treasury Officer, Madurai, Madurai District.

3.The Assistant Treasury Officer, Peraiyoor, Madurai District.

+1CC to Mr.Gunasekaran, Advocate, SR.No.80995.
+1Cc to SPL G.P SR.No.81141.

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