BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.20358 of 2014

and

M.P.(MD) No.1 of 2014 & 1 of 2015

C.Rajeshwari ... Petitioner

vs.

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

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.17136/2014/K3 dated 14.11.2014 and quash the same.

For Petitioner : Mr.B.S.Meltiue
For Respondents : Mr.P.Gunasekaran for R1
Mr.K.Mu.Muthu
Additional Government Pleader for R2

O R D E R

The order of recovery, dated 14.11.2014, issued by the second respondent, is under challenge in the present writ petition.

2. The writ petitioner is a family pensioner aged about 65 years. The writ petitioner's husband, who was employed as Health Inspector Grade-I, retired from service on attaining the age of superannuation on 31.01.2003 and subsequently, he died. The family pension was sanctioned to the writ petitioner by the respondents in accordance with the pension rules in force. Suddenly, the impugned order of recovery has been issued stating that there was an audit objection in respect of the excess payment of Rs.1,48,740/- made to the writ petitioner and therefore, the said excess payment of family pension is to be recovered by way of monthly installments. Challenging the said order of recovery, the present writ petition is filed.

3. This Court is of the opinion that the family pension cannot be recovered from the family pensioner, even if an excess amount has been paid by way of either mistake or wrong fixation. This apart, the monetary benefits cannot be recovered from the family pensioner, without providing any show-cause notice or opportunity to the person affected.

4. The legal principles, in this regard, are settled by the Honourable Supreme Court of India in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***, reported in ***(2015) 4 SCC 334***. The relevant paragraphs are extracted hereunder:

> *"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 hereinabove, we may, as a ready reference summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from the 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. The writ petitioner is a family pensioner and there was no misrepresentation or otherwise on the part of the writ petitioner, even there was no undertaking in this regard. Under these circumstances, the impugned order of recovery is untenable and the excess payment already paid to the writ petitioner cannot be recovered from the writ petitioner. This being the factum, the following orders are passed:

i. The impugned order of recovery, dated 14.11.2014, passed by the second respondent, is quashed.

ii. The respondents are directed to fix the correct scale of pay as applicable to the writ petitioner's husband and accordingly, pay the revised family pension and continue the pay to the writ petitioner with reference to the pension rules in force.

6. With these observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To:

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

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

+1 CC to M/s.B.S.MELTIUE, Advocate (SR-78175[F] dated 29/07/2019)

+1 CC to M/s.SPL GP (SR-78209[F] dated 29/07/2019)

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KK/SAR/02.08.2019/3P-5C/