



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.64 of 2014

WEB COPY

A.Somu

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai - 600 004.

2.The Accountant General,
O/o. The Accountant General,
Anna Salai, Chennai - 18.

3.The Superintendent of Police,
Madurai District.

4.The Sub-Treasurer,
O/o. The Sub-Treasurer,
Thirumangalam,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second and third respondents to refund recovered amount of Rs.31,636/- on the basis of the petitioner's representation dated 20.08.2013.

For Petitioner : Mr.S.A.Rajaram

For Respondents 1,3&4 : Mr.D.Muruganantham

Additional Government Pleader

For Respondent No.2 : Mr.P.Gunasekaran

O R D E R

The lis on hand is filed for a direction to direct the respondents 2 and 3 to refund the recovery amount of Rs.31,636 on the basis of the petitioner's representation dated 20.08.2013.

2.Learned Counsel for the writ petitioner states that the writ petitioner was appointed as Grade - II Police Constable and promoted up to the level of Head Constable of Police and retired from service on 30.04.2008. The terminal and retirement benefits of the writ petitioner had already been settled. In respect of the settlement of pensionary benefits, the respondents have committed an error in calculation and accordingly, the excess amount of Rs.31,363/- was



paid to the writ petitioner, at the time of effecting revision of pay.

3.At the outset, on account of the mistake committed by the establishment, the excess amount of Rs.31,363/- was paid to the writ petitioner and the writ petitioner had already deposited the excess amount during the year 2011 itself. The order of recovery dated 05.01.2011 states that the amount of Rs.31,363/- was paid twice to the writ petitioner. The amount of gratuity was twice paid to the writ petitioner and on account of the mistake, the writ petitioner was directed to repay the excess amount already paid to the writ petitioner. Accordingly, the amount was deposited by the writ petitioner during the year 2011 itself. However, the present writ petition is filed for a direction to refund the excess amount paid.

4.This Court is of the considered opinion that the amount of gratuity was paid to the writ petitioner. Thus, it cannot be considered as an excess payment. It is a mistaken payment paid in favour of the writ petitioner and the said amount also has been recovered long back. This being the factum, now after a lapse of eight [8] years, this Court cannot direct the respondents to repay the amount already paid. In case the recovery amount has not been effected, then the principle laid down in the case of ***State of Punjab and others Vs. Rafiq Mashi (White Washer) and others*** reported in (2015) 4 SCC 334, can be applied. However, the excess amount has already been recovered from the writ petitioner. There cannot be any direction to refund the excess amount and the same will be against the principle laid down by the Apex Court in the very same case.

5.The recovery from the retired employees are deferred by the Supreme Court on account of the fact that the retired employees may not be in a position to pay the excess amount with the meagre amount of pension. In the present case on hand, it is a double payment. Therefore, the principle laid down by the Supreme Court cannot be applied with reference to the facts and circumstances of the present case.

6.Learned Additional Government Pleader also narrated the double payment made to the writ petitioner regarding the over drawal of DCRC of Rs.31,363/- by the Treasury Officer. Paragraph 3 and 4 of the counter affidavit reads as follows:

"3.It is submitted that the petitioner herein filed this writ petition praying that seeking to refund of the recovery made on the over drawal of DCRG of Rs.31,636/- by Sub-Treasury Officer, Thirumangalam. Tr.A.Somu was worked as head constable No.418 in Madurai District and he was allowed to retire on superannuation on 30.04.2008 as per TNPR. Accordingly the entire pensionary benefits have been drawn and paid to the Retd.HC.418 A.Somu in time. After that as



per G.O.Ms.No.234 Finance (PC) Dept. Dt.01.06.2009 and Govt letter No.44880/PC/2009-1 dt.04.08.2009 the pay of the Govt servant of Tamilnadu have been revised and it will be taken into account w.e.f. 01.01.2006 both duty period up to 30.04.2008 and also pension period from 01.05.2008 onwards.

4) on consequent of the above orders the pay of retd Head Constable 418 A.Somu has been revised in pay scales rules 2009 and necessary revised pension proposal has also been sent to the Accountant General, Chennai, and it was submitted by the Accountant General, Chennai in his letter No.Pen/EDP/SL/No.PA.13783/PCR/09-10 dated 18.03.10. Hence, the difference of gratuity in respect of Retd HC.418 A.Somu was worked out of Rs.47454/- by the department and Govt. have instructed that the difference of DCRG will be disbursed to the Retired Govt. servants in three installments. Accordingly the entire amount of DCRG arrears were drawn and paid to the individual through ECS in equal three installments worked out at Rs.15818/- and first and second installments of Rs.31636/- (15818+15818) have been drawn in this bill No.93/2010-2011 and paid to the Retired HC.418 on 19.10.2010. After that the third installment of DCRG arrears amount of Rs.15818/- has also been drawn in bill No.83/2011-12 and paid to the retired HC.418 A.Somu on 24.06.11 through ECS."

7.In view of the fact that the double payment made to the writ petitioner was already recovered during the year 2011, the present direction sought for to return the amount cannot be issued by this Court.

8.Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

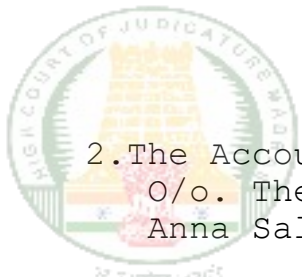
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Sub Assistant Registrar(CS)

To

1.The Director General of Police,
Kamarajar Salai,
Mylapore,

Chennai - 600 004.
<https://hcservices.courts.gov.in/hcservices/>



2.The Accountant General,
O/o. The Accountant General,
Anna Salai, Chennai - 18.

3.The Superintendent of Police,
Madurai District.

4.The Sub-Treasurer,
O/o. The Sub-Treasurer,
Thirumangalam,
Madurai District.

+1 CC to Mr.A.RAJARAM, Advocate (SR-75755[F] dated 17/07/2019)
+1 CC to SPL GP (SR-76004[F] dated 18/07/2019)

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mr

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