



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.18213 of 2015

and

M.P(MD)No.1 of 2015

Dr.A.J.Thinkaran
Professor/Head of the Social Science Department (Retd),
Lady Doak College,
Madurai, Madurai District. ... Petitioner

-Vs-

1.The Treasury Officer,
Office of the District Treasury Office,
Madurai, Madurai District.

2.The Assistant Treasury Officer,
Office of the District Treasury Office,
Madurai, Madurai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from recovering any amount from the petitioner's pension in pursuance to the notice issued by the 2nd respondent in his proceedings in Na.Ka.no.481/J1/2015 dated 09.09.2015 and consequentially to direct the 1st respondent to refund the recovered amount for the month of September 2015.

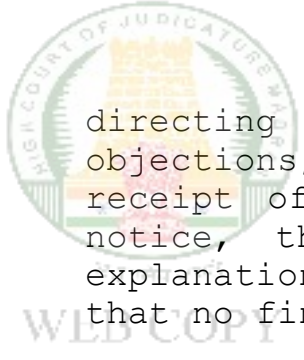
For Petitioner : Mr.A.Nawazkhan
for M/s.Ajmal Associates

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader

ORDER

The show-cause notice, dated 09.09.2015 providing an opportunity to the writ petitioner to submit his objections / explanations in respect of the excess payment made to the writ petitioner, is under challenge in the present writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The learned counsel appearing on behalf of the writ petitioner states that the impugned notice has been issued



directing the writ petitioner to submit his explanation / objections, if any, within a period of 15 days from the date of receipt of the show cause notice. Pursuant to the show-cause notice, the writ petitioner also submitted his objections / explanation by letter, dated 18.09.2015, however, it is admitted that no final order of recovery has been passed.

3.No writ petition can be initiated against the show-cause notice in a routine manner. Judicial review against the show-cause notices under Article 226 of the Constitution is limited. A show-cause notice can be challenged, if the same has been issued by an incompetent authority having no jurisdiction or any allegations of *malafides* are raised or if same is issued in violation of the statutory rules in force. Even in case of allegations of raising are *malafides*, the authorities whom such on allegations raised are to be impleaded as party respondents in his personal capacity in the writ proceedings. In the absence of any one of the legal grounds, no writ petition can be initiated against a show-cause notice.

4.The writ petitioner has already submitted an explanation to the show cause notice before passing final order, the present writ petition is filed.

5.Admittedly, the writ petitioner is a senior citizen and a pensioner. Thus, the excess payment, if at all paid to the writ petitioner, the same cannot be recovered from the writ petitioner. In view of the Judgment of the Hon'ble Supreme Court of India. The Supreme Court has held that the excess amount of pension paid to the pensioners cannot be recovered, after a lapse of so many years. In the present case, the writ petitioner is a pensioner and therefore, even in case, if there is an excess payment, the same cannot be recovered from the writ petitioner. However, the State cannot suffer financial loss. The respondents are bound to conduct an enquiry and in the event of any erroneous fixation by the establishment of the office of the respondent and the excess amount if any is to be recovered from officials, who all are liable and accountable for such erroneous fixation. In all such cases, an enquiry is to be conducted and the officials who committed such error and made excess payment ought to be held liable and accountable. Thereafter, all suitable actions are to be initiated against all those officials, who are all responsible and accountable and the financial loss to the State exchequer must be recovered from those erring officials. This being the principles to be followed, the present writ petition cannot be entertained. However, the respondents are directed to consider all these aspects and take a decision by considering the explanations submitted by the writ petitioner and pass final orders within a period of four weeks from the date of receipt of a copy of this order.



6. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Treasury Officer,
Office of the District Treasury Office,
Madurai, Madurai District.
2. The Assistant Treasury Officer,
Office of the District Treasury Office,
Madurai, Madurai District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate SR-75158.
+1 CC to SPL GP SR-75200.

W.P. (MD) .No.18213 of 2015
12.07.2019

CS(29.07.2019) 3P 5C