



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.18628 of 2015

and

M.P. (MD)Nos.1 an 2 of 2015

WEB COPY

1.V.Kothandaraman (Died)

2.B.Sarada

... Petitioners

vs.

1. The Director of Pension,
Thenampet, Chennai - 6.

2. The Treasury Officer,
District Treasury, Madurai - 20.

... Respondents

(P2 was substituted for the deceased sole petitioner, vide order of this Court, dated 02.04.2019, in W.M.P.(MD)No.18075 of 2017)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by the second respondent in Na.Ka.No.487/K1/2015, dated 04.09.2015 and quash the same and consequently, to direct the second respondent to restore the petitioner's original pension as on 03.08.2015 and to refund the recovery made on 03.09.2015 and 05.10.2015.

For Petitioner : Mr.S.Govindan

For R1 : Mr.R.Murugan
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent, dated 04.09.2015 and for consequential direction to direct the second respondent to restore the petitioner's original pension as on 03.08.2015 and to refund the recovery made on 03.09.2015 and 05.10.2015.

2.The petitioner was appointed as Junior Assistant on 01.10.1966 in Madurai Municipality and later he was transferred to Boys High School, Mahal, Madurai, in 1982. After acquiring qualification, the petitioner was later recruited to the post of Tamil Pandit at Madurai Corporation School. After an unblemished



service, the petitioner retired from service on 30.06.1993 on attaining the age of superannuation. It is not in dispute that the pension was sanctioned and the petitioner received pension for about 22 years without any remark.

3. It is stated that the petitioner was receiving a sum of Rs.17,491/- towards pension upto 03.08.2015. However, by impugned order, dated 04.09.2015, the second respondent directed the petitioner to repay a sum of Rs.2,55,825/- from the pension payable to him. It is stated that the recovery was on account of wrong fixation of pay, as per the impugned order. Challenging the order of recovery, the above writ petition is filed mainly on the ground of violation of principles of natural justice.

4. The learned Counsel for the petitioner stated that the pay fixation and consequential pension benefit has been availed by the petitioner from 01.07.1993 and the impugned order was passed after 22 years is un-sustainable. By referring to Rule 9 of the Tamil Nadu Pension Rules, it is further stated that the retirement benefit, which was confirmed for a long time, cannot be recovered on the basis of wrong fixation.

5. The learned Counsel for the petitioner relied upon the judgment of Honourable Supreme Court in the case of **State of Punjab and others vs Rafiq Masih (White Washer) and others**, reported in **2015 (3) LLN 575 (SC)**, wherein, the Honourable Supreme Court has held as follows:

"12. 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 inequitable, unjust, or iniquitous or harsh or arbitrary to such an



extent, as would far outweigh the equitable balance of the employer's right to recover."

6.The facts in this case are not in dispute. Recovery of a huge sum has been ordered, after 22 years of retirement of the petitioner. The impugned order of recovery is in violation of principles of natural justice. Without a prior intimation or show cause notice, the impugned order has been passed. Even the details, as to how the wrong fixation was arrived at, are not disclosed in the impugned order. As per the decision of Honourable Supreme Court above referred to, recovery cannot be ordered against a retired employee, after long period. This is not a case, where, re-fixation was warranted on account of any false representation or some act attributable to the petitioner.

7.In the above circumstances, this Court is inclined to allow this Writ Petition. Accordingly, the Writ Petition is allowed and the impugned order passed by the second respondent, dated 04.09.2015 is quashed and the second respondent is directed to restore the petitioner's original pension as on 03.08.2015 and to refund the recovery, if any made in the meanwhile within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director of Pension,
Thenampet, Chennai - 6.
2. The Treasury Officer,
District Treasury, Madurai - 20.

+1 CC to Mr.S.GOVINDAN, Advocate (SR-90339[F] dated 30/09/2019)
+1 CC to M/s.SPL GP (SR-90533[F] dated 30/09/2019)

W.P. (MD)No.18628 of 2015
27.09.2019

cmr

VB(17.10.2019) 3P 5C