



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.2044 of 2015
and
M.P (MD)No.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 is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent in Na.Ka.No.5250/2014/K3 dated 16.12.2014 and quash the same.

For Petitioner : Mr.B.S.Meltiue

For R1 : Mr.P.Gunasekaran

For R2 : Mr.M.Jeyakumar,
Additional Government Pleader

ORDER

The order of recovery dated 16.12.2014 is under challenge in the present writ petition.

2. The writ petitioner is the family pensioner. The husband of the writ petitioner was working as Health Inspector Grade-I and retired from service on 31.01.2003. The family pension was fixed by the respondent as per the Government Orders in force. However, the impugned order of recovery was issued stating that an excess amount of pension was paid to the writ petitioner. The impugned order of recovery was issued without issuing any show cause notice and opportunity to the writ petitioner. This apart, the excess amount



cannot be recovered from the family pensioner, even if the same has been granted by mistake.

3. The learned counsel appearing on behalf of the first respondent also states that the correctness of the fixation had already been verified and now, the family pension as applicable to the writ petitioner is being disbursed every months. Therefore, the error occurred in revision of pension was already rectified, however the excess amount already paid to the writ petitioner cannot be recovered as the petitioner is the family pensioner.

4. In this regard, the Hon'ble Supreme Court of India also enumerated the legal principles in the case of State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334 in paragraph No.18 of the judgment is relevant and the same is 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).

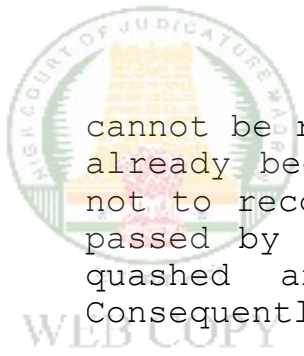
(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

5. In view of the fact that the writ petitioner is a family pensioner, an excess amount already paid to the writ petitioner



cannot be recovered as submitted the correctness of the fixation had already been verified and therefore, the respondents are directed not to recover the excess amount. Consequently, the impugned order passed by the second respondent in proceeding dated 16.12.2014 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// 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.P. GUNA SEKARAN, Advocate (SR-82799[F] dated
21/08/2019)

+1 CC to M/s.B.S.MELTIUE, Advocate (SR-83034[F] dated 22/08/2019)

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21.08.2019

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