



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD).No.8830 of 2015

and

M.P.(MD)No.2 of 2015

A.Rajamanickam

... Petitioner

-Vs-

1.The Accountant General (Accounts and Entitlements),
Tamil Nadu State, 361, Anna Salai,
Chennai 600 018.

2.The Dean,
Rajaji Government Hospital,
Madurai.

3.The Treasury Officer,
District Treasury, Collectorate Complex,
Madurai-625 020

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records second respondent i.e., the Dean, Rajai Government Hospital, Madurai relating to R.C.No.12183/N1/1/12, dated 27.02.2015 and quash the same.

For Petitioner : Mr.S.Visvalingam

For Respondents: Mr.P.Gunasekaran (for R1)

Mr.M.Jeyakumar
Additional Government Pleader
(for R2 and R3)

ORDER

The order of recovery, dated 27.02.2015, is under challenge in the present writ petition.

2.The writ petitioner was serving as Chief Pharmacist in the Government Theni Medical College Hospital and retired from service

<https://hcservices.ecourts.gov.in/hcservices/>



on 31.03.2010. He was allowed to retire peacefully. The pension was fixed to the writ petitioner based on the Government orders and the pay rules in force and taking into account, the last pay drawn of the writ petitioner. Then, the writ petitioner was receiving the monthly pension, the impugned order of recovery was issued in proceeding, dated 27.02.2015, based on the audit objections.

3.The learned counsel appearing on behalf of the writ petitioner states that no notice or opportunity was given to the writ petitioner before issuing the impugned order. Thus, the impugned order is in violation of the principles of natural justice.

4.The learned Additional Government Pleader appearing on behalf of the respondents 2 and 3 opposed the contentions by stating that the promotion pay was erroneously fixed to the writ petitioner and in this regard, the audit objections were raised and consequently, the recovery was imposed. Thus, there is no infirmity in respect of the recovery imposed on the writ petitioner. The writ petitioner was not eligible for the sanction of bonus increment as per the Government orders. Thus, the excess bonus increment granted is sought to be recovered.

5.In the absence of establishing any misrepresentation or any undertaking by the writ petitioner, the excess amount paid by mistake or error cannot be recovered from the pensioner. In view of the legal principles settled by the Hon'ble Supreme Court of India 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."

6. In view of the fact that the writ petitioner is a pensioner and the excess payment of pension, if at all, paid by mistake, the same cannot be recovered after a lapse of many years. The impugned order of recovery was issued after a lapse of five years from the date of retirement. In this view of the matter, the writ petition deserves to be considered, consequently, the impugned order of recovery passed by the second respondent in proceeding R.C.No.12183/N1/1/12, dated 27.02.2015, is quashed. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Ad-I)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Dean,
Rajaji Government Hospital,
Madurai.
2. The Treasury Officer,
District Treasury, Collectorate Complex,
Madurai-625 020.
3. The Accountant General (Accounts and Entitlements),
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