BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.795 of 2017
and
W.M.P(MD)No.645 of 2017

M.Benayaman ... Petitioner

Vs.

1.The Accountant General,
(Accounts & Entitlements),
Tamil Nadu,
261, Anna Salai,
Chennai-600 018.

2.The Additional Sub Treasury Officer,
Kalkulam,
At Thuckalay,
Kanyakumari District-629 175. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the Respondents 1 and 2 herein from recovering the Pension of the Petitioner in Pension Payment Order No.C172423/EDG.

For Petitioner : M/s.S.Bharathy Kannan

For R1 : Mr.P.Gunasekaran

For R2 : Mr.C.Ramar,
Additional Government Pleader

ORDER

The petitioner has come out with the present writ petition seeking for a mandamus, forbearing the Respondents 1 and 2 from recovering the Pension of the Petitioner in Pension Payment Order No.C172423/EDG.

2. The petitioner was appointed as Secondary Grade Teacher on 21.03.1974 and was promoted as B.T.Assistant on 1.6.1978 and retired from service on 31.01.2005 on attaining the age of superannuation. The respondents fixed the pension payable to the petitioner at Rs.4,061/- at the time of retirement and the respondents enhanced the same on three occasions at Rs. 9,975/- per month with effect from 01.01.2006 and Rs.10,500/- with effect from 01.01.2011 and thereafter, the total emoluments was fixed at Rs.22,024/- per month with effect from 31.10.2016. On 31.10.2016 the second respondent credited a sum of Rs.22,024/- to his Savings Account at Canara Bank, Kulasekaram Branch. On 30.11.2016, the second respondent credited only a sum of Rs.8,374/- to the petitioner's account. On enquiries, the petitioner was informed by the second respondent that the pension payable was wrongly fixed and therefore, he is going to recover the excess amount from his pension. In such circumstances, the petitioner has come out with the present writ petition.

3. The learned counsel appearing for the petitioner contended that the action of the second respondent in not paying full pension is illegal. The second respondent without any notice to the petitioner and without furnishing any particulars with regard to the excess payment, has started deduction from the pension amount payable to the petitioner. The second respondent is liable to be restrained from deducting any amount from pension and refund the amount already deducted. In support of his contention, the learned counsel for the petitioner relied on the judgment in State of Punjab v. Rafiq Masih reported in (2015) 4 Supreme Court Cases 334 wherein at paragraph No.18, the Hon'ble Apex Court has held as follows-

> "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."

4. Per contra, the learned counsel for the first and second respondents separately contended that during the revision of pension, the pay of the petitioner was wrongly fixed and was paid to the petitioner. In view of the same, recovery was ordered. The second respondent recovered the amount paid in excess. The second respondent fixed the pension payable to the petitioner and enhanced the same as per the rules and Government Orders and the petitioner has not made any representation. The first and second respondents inadvertently fixed the excess amount as pension and paid the same to the petitioner. The petitioner is not entitled to the amounts wrongly fixed and paid to him and therefore, re-fixation of pension was made and the same was ordered to be recovered. The same is valid and legal and prayed for dismissal of the writ petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent as well as the learned Additional Government Pleader appearing for the second respondent and perused the materials available on record.

6. From the materials on record, it is seen that when the petitioner retired from service on 31.01.2005 after rendering 30 years and 9 months service, considering the post in which, the petitioner was holding and the salary received by him, the second respondent calculated and fixed the pension payable to him. As per the rules and Government Orders prevailing at that time, the second respondent enhanced the pension payable to the petitioner on three occasions. The pension calculated and fixed and the enhancement made by the Department, is voluntary and there was no misrepresentation by the petitioner. The issue of recovery of the alleged excess amount was considered 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. The Hon'ble Supreme Court of India enumerated in paragraph 18 of the judgment, which is extracted above. The Hon'ble Supreme Court enumerated some of the situation under which, the employer cannot recover the alleged excess amount. The situation Nos.2 and 3 enumerated therein are squarely applicable to the facts of the present case.

7. For the above reason, the writ petition is allowed directing the second respondent to refund the amounts already recovered from the pension payable to the petitioner, within a period of four weeks

from the date of receipt of a copy of this order and also shall pay the full pension from November, 2016 onwards. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Accountant General,
(Accounts & Entitlements),
Tamil Nadu,
261, Anna Salai,
Chennai-600 018.

2.The Additional Sub Treasury Officer,
Kalkulam,
At Thuckalay,
Kanyakumari District-629 175.

+1 CC to M/s.S.BHARATHY KANNAN, Advocate (SR-86610[F] dated 13/09/2019)

+1 CC to M/s.P.GUNASAKARAN, Advocate (SR-86812[F] dated 16/09/2019)

+1 CC to M/s.SPL GP (SR-86939[F] dated 16/09/2019)

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JMN(25.10.2019) 4P : 6C