BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.10.2019
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P(MD)No.22855 of 2019
and
W.M.P(MD)No.19604 of 2019

S.Paramasivam ... Petitioner

vs.

1.The Commissioner of Treasuries and Accounts,
3rd Floor, Integrated Office Complex for Finance Department, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai-600 035.

2.The District Elementary Educational Officer,
Pudukottai,
Pudukottai District.

3.The Treasury Officer,
District Treasury,
Pudukottai,
Pudukottai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent i.e., the Treasury Officer, Pudukottai in his ந.க.எண்.12014/2015/E2 நாள்:12.01.2016 and quash the same and consequently direct the third respondent i.e., the Treasury Officer, Pudukottai to refund the recovered amount of Rs.4,22,224/- to the petitioner within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader

ORDER

This writ petition is filed challenging the impugned order of the third respondent i.e., the Treasury Officer, Pudukottai, in his ந.க.எண்.12014/2015/E2 நாள்:12.01.2016 and quash the same and consequently direct the third respondent to refund the recovered amount of Rs.4,22,224/- to the petitioner.

2.Mr.VR.Shanmuganathan, learned Special Government Pleader takes notice for the respondents. By consent of both parties, the

Writ Petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioner, he retired from service on 30.06.1986 as Headmaster on attaining the age of superannuation. The petitioner's pension was calculated and refixed as per the Government Order in G.O.Ms.No.666, Finance (Pay Cell) Department, dated 27.06.1989, and the same was paid. While so, in January 2016, by the impugned order dated 12.01.2016, the third respondent informed the petitioner that a sum of Rs.4,22,224/- is paid in excess and recovered the entire excess amount from the pension payable to the petitioner. According to the learned counsel for the petitioner, the third respondent has not issued any notice to the petitioner before issuing the order of recovery and has not furnished any reason as to how a sum of Rs.4,22,224/- is paid in excess. The petitioner is aged about 91 years and the petitioner could not challenge the same immediately. After recovered from his illness, he filed the present writ petition.

4. The learned counsel appearing for the petitioner contended that after a lapse of 30 years of retirement, the respondents cannot contend that the pension was wrongly fixed and paid excessively to the petitioner. Further, after 30 years, the respondents are not entitled to recover the amounts even if paid in excess and relied on the judgment of ***State of Punjab v. Rafiq Masih*** reported in ***(2015) 4 Supreme Court Cases 334.***

5. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents contended that the writ petition is liable to be dismissed on the ground of delay and laches. The impugned order is passed in the year 2016 and the writ petition is filed only in the year 2019. The pension of the petitioner was mistakenly refixed and paid in excess. When the mistake was found out, the excess amount was recovered from the petitioner, which is valid and legal and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner was retired from service as Headmaster on 30.06.1986 and from that date onwards, the pension is being paid to the petitioner. The pension so fixed, is not based on any misrepresentation made by the petitioner. The respondents themselves fixed the pension as per the Government Order in G.O.Ms.No.666, Finance (Pay Cell) Department, dated 27.06.1989. After having paid the pension as refixed, as per G.O.Ms.No.666, Finance (Pay Cell) Department, dated 27.06.1989 for 30 years, it

is not open to the respondents now to contend that the quantum of pension was wrongly fixed and paid in excess. The respondents have not issued any notice to the petitioner and not given any opportunity to him to put forth his case. The issue of recovery of amounts alleged to have been paid excessively came up for consideration before the Hon'ble Apex Court and the Apex Court in the Judgment of ***State of Punjab v. Rafiq Masih*** reported in ***(2015) 4 Supreme Court Cases 334*** in paragraph No.18, 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."*

8. As per the judgment of the Hon'ble Apex Court, after a lapse of 30 years, the amounts cannot be recovered especially, from the retired employees, like that of the petitioner herein. The ratio in the judgment of Hon'ble Apex Court [cited supra] is squarely applicable to the case of the petitioner. The Division Bench of this Court in W.A.No.207 of 2019, dated 24.01.2019 also reiterated the said proposition of law.

9. For the above reason, the impugned order of recovery of the pension amount, is invalid and illegal and the same is liable to be quashed. As far as the contention of the learned Special Government Pleader that the writ petition is liable to be

dismissed on the ground of delay and laches, is without merits. The petitioner is aged about 91 years and has given valid and sufficient reason for not approaching this Court at the earliest.

10. In view of the above reasons, the impugned order of the third respondent, dated 12.01.2016, is quashed and the writ petition is allowed. The third respondent is directed to pay a sum of Rs.4,22,224/- recovered from the petitioner, within a period of two weeks from the date of receipt of a copy of this order and continue to pay the pension as fixed earlier, without any deduction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Treasuries and Accounts,
3rd Floor, Integrated Office Complex for Finance
Department, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai-600 035.

2.The District Elementary Educational Officer,
Pudukottai,
Pudukottai District.

3.The Treasury Officer,
District Treasury,
Pudukottai,
Pudukottai District.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-94941[F] dated 30/10/2019)

+1 CC to M/s.SPL GP (SR-95112[F] dated 31/10/2019)

W.P(MD)No.22855 of 2019
30.10.2019

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