IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.12.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.1295 of 2014

P.Palanichamy ... Petitioner

- Vs -

1.The Director,
CVRDE, (Compact Vehicle Research and
Development Establishment), Avadi,
Chennai 600 054.

2.The Principal Controller of Defense Accounts
(Pension) , DRAUPATHYGHAT,
Allahabad -211.

3.The Branch Manager,
State Bank of India Pension Cell,
112/4, Kaliyamman Koil Street,
Natesan Nagar, Virugampakkam,
chennai 600 092. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, forbearing the respondents from deducting a sum of Rs.2500/- from the monthly pension payable to the petitioner through SBI Account No.10313699894.

For Petitioner : M/S.N.Valliamma
For Respondents : M/S.V.Ashok Kumar for R1
: M/S. Sudharshana Sundar for R2
: M/S.C.K.Chandrasekkar for R3

ORDER

This writ petition has been filed by the petitioner to forbear the respondents from deducting a sum of Rs.2500/- from the monthly pension payable to the petitioner through SBI Account No.10313699894.

2.According to the petitioner, he has worked under the 1st respondent as Technical Assistant and retired from service on 01.02.2005 on superannuation. He rendered his service without any remarks. His monthly pension was calculated by the 2nd respondent and paid through the 3rd respondent. His pension payment account number with the 3rd respondent is 10313699894, through which he is drawing his monthly pension.

2.1.It is the case of the petitioner that he regularly received his monthly pension without any hindrance up to July 2010, suddenly the 3rd respondent started deducting a sum of Rs. 2500/- per month. The 3rd respondent has told him that they have wrongly calculated the pension as per the 6th Pay Commission recommendation and further told that they have paid excess amount in the pension paid to him.

2.2.It is the grievance of the petitioner that without issuing any prior notice or without calling for any explanation, the 3rd respondent unilaterally started recovery, which affects his entire survival as he and his wife is solely dependent upon his monthly pension. The action of the respondents is totally in violation of principles of natural justice and the action of the respondents is highly illegal and contrary to various ruling of the Hon'ble Apex Court. Challenging the order of recovery, he filed writ petition in W.P.No.694/2011 before this Court and this Court, on the premise that the 2nd respondent is a central Government organisation, hence he was asked to approach the Central Administrative Tribunal. Accordingly he filed a petition in O.A.No.155 of 2011 before the Central Administrative Tribunal and by order dated 29.07.2012, the Tribunal dismissed the original application on the ground that the 3rd respondent would not come under the jurisdiction of Central Administrative Tribunal, since the pension benefits was wrongly calculated and paid by the 3rd respondent only. Aggrieved by the said order, the petitioner preferred WP.No.25396/2012 in which this Court granted stay of recovery, but thereafter, the writ petition was dismissed observing that the order of the Central Administrative Tribunal is correct and directed him to file a fresh writ petition challenging the recovery by the 3rd respondent. Hence the present writ petition.

3.Learned counsel appearing for the petitioner submitted that in the present case is squarely covered by the order passed by this Court in WP.No.36507/2006 dated 29.11.2013. It is the submission of the learned counsel for the petitioner that though the 1st and 2nd respondent is the employer of the petitioner, however, the pension was paid through the 3rd respondent bank and unilaterally, without opportunity to the petitioner, deduction was ordered from the pension, which is wholly impermissible. Accordingly she prays for allowing the petition.

4. Learned standing counsel appearing for the 3rd respondent submitted that the petitioner having received the excess amount from the Bank ought to return the same since the relation is only that of Banker and Customer and not one of employer and employee. The petitioner's pension has not been reduced in any manner but only the excess payment received by him from the 3rd respondent bank is sought to be recovered. The deduction by the 3rd respondent is on the basis of the correspondence that emanated from the 1st and 2nd respondents. In compliance of the above order, the 3rd respondent Bank has started recovery, which is not on his own, but only as per the direction of the 1st and 2nd respondent. Hence without challenging the order of recovery issued by the 1st and 2nd respondents, filing this petition is not maintainable . In support of his contention he relied upon the judgement in WP.No.8351/2012 and prays for dismissal of the petition.

5.This Court heard the submissions of the learned counsel appearing for the petitioner and the respondent and perused the materials available on record as also the decision on which reliance has been placed by either side learned counsel.

6. The facts in issue are not in dispute. It is borne out by record that before ordering recovery no notice has been issued to the petitioner by the 3rd respondent. However, it should not be lost sight of that the 3rd respondent is a bank through which the pension is being paid to the petitioner and that the relationship between the petitioner and the 3rd respondent is not that of employer and employee. The 3rd respondent, on the basis of the directions from the 1st and 2nd respondents, has started to deduct the amount from the pension of the petitioner. In such a backdrop, the course open to the petitioner is to challenge the order of respondents 1 and 2 in and by which the 3rd respondent was directed to deduct the amount of Rs.2500/- from the pension of the petitioner. Without challenging the said order of respondents 1 and 2, questioning the deduction made by the bank at the behest of the direction of respondents 1 and 2 cannot be permitted. The petitioner has erroneously challenged the deduction made by the bank, though he ought to have challenged the order of respondents 1 and 2 in and by which direction was issued to the 3rd respondent bank to deduct the amount.

7. In the above circumstances, this Court is of the view that the present petition cannot be maintained by the petitioner and, accordingly, the same deserves to be dismissed. Accordingly, the present petition is dismissed. However, liberty is granted to the petitioner to challenge the order of

recovery passed by respondents 1 and 2 in accordance with law, if so advised. There shall be no order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

jrs

To
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chennai 600 092

+1 cc to M/s.N.Valliamma advocate sr41434

W.P. NO.1295 of 2014

rsl(co)
aa15/03/2021