



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.17259 of 2013

and

M.P(MD).No.1 of 2013

WEB COPY

K.Thirumavalavan

... Petitioner

Vs.

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

2.The District Treasury Officer,
District Collectorate Campus,
Thiruchirappalli-620 001.

3.The District Educational Officer,
Thiruchirappalli-620 001.

4.The Secretary and Correspondent,
Khajamian Higher Secondary School,
Khaja Nagar,
Thiruchirappalli-620 020.

... Respondents

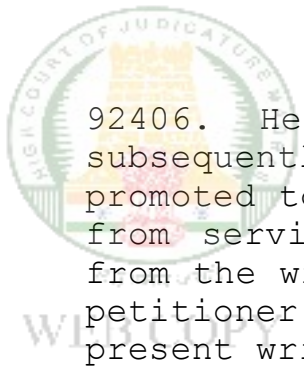
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from making recovery from the petitioner's pension in 'Pension Payment Order No.T - 92406, dated 07.04.1994', on the file of the 2nd respondent and further directing the respondents to disburse to the petitioner, the amount of Rs.7,124/- already recovered from the petitioner's pension pertaining to September, 2013, together with interest at the rate of 18% per annum from the date of due for payment to the date of actual payment within a stipulated period of time.

For Petitioner	: Mr.Dr.D.Gnanasekaran
For R1	: Mr.P.Gunasekaran
For R2 and R3	: Mrs.S.Srimathi Special Governance Pleader
For R4	: No appearance

ORDER

The recovery has been imposed on the writ petitioner, without passing any orders and without providing any opportunity. The writ

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



92406. He was appointed as a Secondary Grade Teacher and subsequently promoted to the post of Headmistress, finally, he was promoted to the post of Post Graduate Assistant(Tamil) and retired from service on 31.10.1994. Suddenly, the pension was recovered from the writ petitioner, without any order and notice to the writ petitioner. Thus, the writ petitioner is constrained to file the present writ petition.

2.The grievance of the writ petitioner is that his selection grade pay and pension was fixed, based on the Government Orders in force. Whiles, the recovery was imposed without any show cause notice and order by the respondents.

3.The learned counsel appearing on behalf of the respondents is unable to establish that an order of recovery was passed or an opportunity was provided to the writ petitioner, before taking a decision to impose recovery. Thus, the writ petitioner is a pensioner, even an excess amount was paid in earlier, the same cannot be recovered, after a lapse of many years. The Hon'ble Supreme Court also clarified the legal principles in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 Supreme Court Cases 334** that the excess payment if any paid to the pensioner cannot be recovered, after a lapse of many years. This being the settled principles, this Court is of the considered opinion that the recovery cannot be imposed on the writ petitioner, who is a state pensioner. Accordingly, the respondents are directed not to recover any excess amount already paid to the writ petitioner. However, an error if any in fixation of pay and pension, the said error can be rectified, after issuing show cause notice to the writ petitioner by setting out the details and on receipt of his explanation.

4.Thus, it is made clear that an error in fixation of pension can be rectified by providing opportunity to the writ petitioner and excess payment if any made already, cannot be recovered.

5.With these directions, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2020

Sub Assistant Registrar(CS)



To

1.The Accountant - General (Accounts and Entitlements) Tamil Nadu
261, Anna Salai,
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SR(CO)

KM (06.11.2020) 3P 4C