BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.19655 of 2015
and
M.P(MD).Nos.1 and 2 of 2015

Sriman Sundar Singh ... Petitioner

-Vs-

1. The Director,
   Treasury & Account Department,
   Chennai.

2. The Additional Treasury Officer,
   Madurai District Treasury,
   Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.487/K1/2015 dated 04.09.2015 passed by the second respondent and quash the same and consequently direct the second respondent to refund the recovered amount from the pension of the petitioner.

For Petitioner : Mr.K.Samidurai
For Respondents : Mr.D.Muruganandham
Additional Government Pleader

ORDER

The order of recovery dated 04.09.2015 recovering the excess amount of pension granted to writ petitioner is sought to be quashed.

2.The petitioner was appointed as Secondary Grade Teacher and after rendering 36 years of service, he retired as B.T.Assistant on 31.07.2001. The petitioner is receiving pension from the year 2001 onwards. There was an Audit objection with reference to the fixation of pay and pension to the writ petitioner and the Audit has found that there was an error in the fixation and excess payment was made to the writ petitioner. Accordingly, the impugned order of recovery has been issued.

3.Admittedly, the writ petitioner is a pensioner and receiving pension from the year 2001 onwards. Thus, the mistake occurred due to the error committed by the Establishment Section of the Office of the respondent, for which, the writ petitioner can not be penalized. There was no misrepresentation or otherwise by the writ petitioner. This being the factum, the excess amount already granted to the writ petitioner cannot be recovered. But, the error occurred in the fixation of the pay and pension can be corrected and based on the corrected fixation, the pension is to be paid to the writ petitioner as per the Rules in force. It is relevant to cite the judgement of 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."*

4.The Hon'ble Apex Court of India held that excess payment even if paid to the retired employees, the same cannot be recovered after long years. In the present case, the writ petitioner is now aged about 78 years old. Thus, if any recovery is imposed, it would affect his livelihood and under these circumstances, the impugned order of recovery passed by the second respondent in proceedings No.487/K/2015, dated 04.09.2015 is quashed. The respondents are directed to correct the mistake occurred in the fixation of pay and pension and accordingly, pay the correct pension as applicable to the writ petitioner. The excess amount already paid to the writ petitioner cannot be recovered. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmk

To

1. The Director,
   Treasury & Account Department,
   Chennai.

2. The Additional Treasury Officer,
   Madurai District Treasury,
   Madurai.

+1cc to Mr.K.Samudurai, Advocate, SR.No.24797.

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