



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.4080 of 2015

and

M.P. (MD)No.1 of 2015

V.Balaraj

... Petitioner

Vs.

1.The Regional Joint Director,
Treasuries and Accounts Department,
Tirunelveli,
Tirunelveli District.

2.The Assistant Treasuries Officer,
Treasuries and Accounts,
Vilavancode,
Kanyakumari District.

... 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 on the file of the second respondent pertaining to its order in Lr.No.A2/2015, dated 09.03.2015 and to quash the same and consequently, forbearing the respondents from making any deduction from the petitioner's original pension.

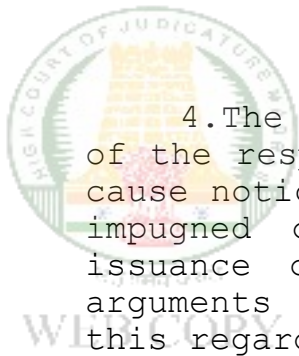
For Petitioner	:	Mr.S.C.Herold Singh
For Respondents	:	Mr.C.M.Mari Chelliah Prabhu Additional Government Pleader

ORDER

The impugned order of recovery dated 09.03.2015 issued by the Assistant Treasuries Officer is under challenge in the present writ petition.

2.During inspection by the Regional Joint Director of Treasuries and Accounts Department, it was found that overpayment of Rs.2,76,647/- was paid to the petitioner who was a family pensioner. The family pension was erroneously fixed with effect from 01.01.2006 and the monetary benefits were paid from 01.01.2007. Thus, the over payment is calculated as Rs.2,76,647/-.

3.The learned counsel for the petitioner made a submission that no notice was issued to the petitioner before issuing the impugned order. Thus, the impugned order is in violation of the principles of the natural justice.



4.The learned Additional Government Pleader appearing on behalf of the respondents disputes the said point by stating that the show cause notice was issued. However, there is no such reference in the impugned order. When the absence of any reference regarding issuance of show cause notice, this Court cannot consider the arguments advanced by the learned Additional Government Pleader in this regard.

5.May that it be, the writ petitioner is a family pensioner aged about 81 years at the time of filing of a writ petition. Thus, even in case of any excess payment had been paid, the same cannot be recovered after a lapse of many years. The alleged overpayment was made during the year 2007. The recovery order has been issued in the year 2015. The Hon'ble Supreme Court of India in clear terms held that even incase of excess payment to the family pensioners or pensioners, the same cannot be recovered after a long time. However, the erroneous fixation if any is to be corrected and the correct pension is to be paid. The said proposition is laid down by the Hon'ble Apex Court in the ***Sate of Punjab Vs. Rafiq Masih*** reported in **2015 4 SCC 334**. The Hon'ble Supreme Court held that recovery from the retired employee is impermissible. Undoubtedly, such recovery would cause great hardship to the petitioner and the family pensioners and the petitioner now aged about 86 years and in the event of any such recovery, it would affect his normal life.

6.This being the factum, the respondents are directed to correct the fixation and accordingly, pay the family pension as applicable with reference to the Rules in force. However, the excess payment already made cannot be recovered from the petitioner. The impugned order passed by the second respondent in letter No.A2/2015, dated 09.03.2015 is quashed, as far as the recovery of excess payment is concerned. Accordingly, the writ petition stands allowed. If any amount had already been recovered from the petitioner, the respondents are directed to reimburse the recovered amount within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Regional Joint Director,
Treasuries and Accounts Department,
Tirunelveli,
Tirunelveli District.

2.The Assistant Treasuries Officer,
Treasuries and Accounts,
Vilavancode,
Kanyakumari District.

+1 CC to M/s.GP (SR-22988[F] dated 26/11/2020)

W.P. (MD)No.4080 of 2015
24.11.2020

MA (CO)
TR (03.12.2020) 3P 4C