BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD) No.451 of 2016 and

WMP (MD)No.371 of 2016

Tmt.K.Sarojini ...Petitioner

Vs

1. The Director of Treasuries,
DMS Complex,
Panagal Buildings,
Saidapet,
Chennai - 600 015.

2. The Treasury Officer,
District Treasury,
Mettupatti Road,
Dindigul. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the second respondent ie., the Treasury Officer, District Treasury, Dindigul District relating to கா.மு.எண் 271/2015 G1 dated 03.12.2015 and quash the same.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.M.Murugan, Government Advocate

O R D E R

This Writ Petition is filed by the petitioner to call for the records of the second respondent ie., the Treasury Officer, District Treasury, Dindigul District relating to கா.மு.எண் 271/2015 G1 dated 03.12.2015 and quash the same.

2. The case of the petitioner is that she served as Assistant in Government Industrial Training Institute and retired voluntarily on 06.07.2000. Her husband was also serving in the same institute as Junior Training Officer and expired on 08.07.1983. The petitioner was receiving family pension of Rs.10,908/- till October 2015. While that being so, the Treasury Officer, District Treasury, Dindigul has addressed a letter dated 03.12.2015 to her stating that he has decided to recover a sum of Rs.2,34,989/- from her family pension, based on the audit objection and the petitioner was directed to pay the entire amount in one installment. The intimation letter dated 03.12.2015 was received by the petitioner only on 08.12.2015. But, even before the intimation letter was received by the petitioner, the second respondent effected the recovery of a sum of Rs.4868/- on

30.11.2015. Hence, the petitioner has come up with the present Writ Petition.

3. The learned counsel for the petitioner submitted that according to the established procedure, the second respondent before effecting recovery, ought to have afforded an opportunity to the petitioner. Admittedly, in this case, no opportunity was given to the petitioner and the Treasury officer has effected the recovery even before the receipt of intimation for recovery by the petitioner. The learned counsel for the petitioner relied on the judgment reported in ***(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer) and others)*** known as white washer's case, where it has been clearly held that recovery cannot be made after retirement and the same was also accepted by the Government in G.O.No.286 Finance (Pension) Department dated 28.08.2018, which has also been followed in number of cases. But contrary to the same, the second respondent recovered the amount, without even affording any opportunity to the petitioner and therefore the petitioner is before this Court, challenging the impugned order.

4. The learned Government Advocate relied on the Government letter dated 10.08.2010 and would submit that the recovery was in order and therefore the interference of this Court is not warranted.

5. Heard both sides and perused the documents.

6. On a perusal of records and the submission made by the respondent, it is seen that the petitioner was receiving family pension and it is an admitted fact that no notice has been issued to the petitioner before the recovery order. Further, it is to be noted that even before the recovery order could reach the petitioner, amount has been recovered from her account. As rightly contended by the learned counsel for the petitioner, this Court in the judgment reported in (2015) 4 SCC 334, has held as follows, which is usefully extracted below.

> *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, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *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 issued
iv) Recovery in cases where an employee has wrongly 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

The above order is squarely applicable to the present fact and circumstances of the case.

7. In view of the above, I am inclined to interfere with the order. The impugned order passed by the second respondent is set aside and there shall be a direction to the respondents to refund the amount already recovered from the petitioner. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vrn
To

1. The Director of Treasuries,
DMS Complex,
Panagal Buildings,
Saidapet, Chennai - 600 015.

2. The Treasury Officer,
   District Treasury,
   Mettupatti Road,
   Dindigul.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-10994[F] dated 11/03/2020)

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