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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.07.2021

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.30015 of 2018
and
W.M.P.No.35032 of 2018

S.Shanmugakani

... Petitioner

Vs.

1.The Secretary to Government of India,
Ministry of Personnel,
Public Grievances & Pensions Department of
Personnel and Training,
New Delhi.

2.The Assistant General Manager,
State Bank of India,
No.112/4, Kalamman Koil Street,
Virugambakkam, Chennai - 92.

3.The Branch Manager,
State Bank of India,
Selaiyur Branch,
East Tambaram, Chennai.

... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent's letter No.REV/Recvy-98568 dated 25.10.2018 with consequential direction to the respondents to refund the amount of Rs.10,000/- (Rupees ten thousand only) recovered from the pension account within time frame.

For Petitioner : M/s.K.Jenitha

For R1 : No appearance

For R2 & R3 : Mr.K.Chandrasekaran



O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

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2. The respondents herein, through their impugned order dated 25.10.2018, had sought to recover an amount of Rs.1,68,684/- for the period between 01.10.2018 to 29.02.2020, claiming an excess amount paid, in petitioner's pension account.

3. The learned counsel for the petitioner submitted that the petitioner had retired from his service on 30.06.2016, and after about three years, they were taken by surprise, through the impugned recovery order and no prior show-cause notice was issued. It is also the submission of the learned counsel for the petitioner that though this Court had passed the order of interim stay of the impugned order on 22.11.2018, the respondents had continued with the recovery and had further, issued an other order dated 12.12.2018, for recovery of a sum of Rs.2,40,418/- for alleged excess payment made between 01.12.2018 to 31.08.2021.

4. Apart from the aforesaid submissions, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Punjab & Others vs. Rafiq Masih (White Washer) & Others., reported in (2015) 4 SCC 334 and submitted that recovery from retired employees of payments, that have been mistakenly made by the employer, are impermissible in law.

5. Per contra, the learned Standing Counsel for the respondents / Bank, submitted that the ratio laid down by the Hon'ble Supreme Court in White Washer's case (Supra), has been distinguished by a subsequent judgment of the Hon'ble Supreme Court in the Case of the High Court of Punjab and Haryana & Others vs. Jagdeep Singh, reported in (2016) 14 SCC 267, whereby, it was clarified that whenever a retired employee gives prior undertaking accepting for recovery of any excess amount that may have been paid, the ratio laid down by the Hon'ble Supreme Court in the White Washer's case for prohibiting recovery of excess amount from the retired employees, will not be applicable.

6. Apart from such a submission, Mr.K.Chandrasekaran, the learned Standing Counsel, placed reliance on the averments made in the counter affidavit and stated that the respondents / Bank, are justified in recovering the excess amount, which has been mistakenly paid to the petitioner.

7. Insofar as the ground raised by the petitioner herein is concerned, it is not in dispute that the respondents herein had



not issued any show-cause notice, prior to the impugned recovery order, calling upon the petitioner's objections. Neither the impugned order nor the counter affidavit disputes this fact. It is a settled proposition of law that whenever such prejudicial steps are taken, resulting in recovery of pecuniary benefits, the Authorities concerned are required to call for the objections from the concerned employee, before passing of the final orders. In the absence of such a show-cause notice, the order of recovery would be in violation of the principles of natural justice and hence cannot be sustained.

8. This apart, it is seen, when the petitioner had chosen to challenge the impugned recovery order dated 25.10.2018, this Court had taken note of the decision in White Washer's case and had stayed the impugned order on 22.11.2018. Instead of complying with the interim order, the respondents have chosen to implement the recovery order, by deducting the alleged excess amount from the monthly pension of the petitioner. In addition to the same, when this writ petition was pending, the respondents had once again chosen to issue another recovery order dated 12.12.2018, informing the initiation of recovery action, for a sum of Rs.2,40,418/- claiming it as the excess paid pension amount between the period 01.12.2018 to 31.08.2021. Incidentally, the period covered in the second order dated 12.12.2018, merges with the period covered under the first impugned order dated 25.10.2018, which was between the month of 01.10.2018 to 29.02.2020. The conduct of the respondents, in this regard, is totally condemnable. When the petitioner herein, had challenged the very authority of the respondents, to recover the amount of the excess payment from the petitioner's pension and the issue was pending consideration before this Court, in all fairness, the respondents ought to have awaited for the outcome of the writ petition, instead of resorting to the second recovery order for the same period, which is covered under the first impugned order, more particularly, when this Court had passed interim orders of stay of the order for recovery of the alleged excess payments made between 01.10.2018 to 29.02.2020. Apparently, the conduct of the respondents may amount to contempt the interim orders passed by this Court.

9. Since, this Court has found the impugned order to be illegal, in the absence of show-cause notice, and also this Court intends to give opportunity to the Authorities to issue show-cause notice, proposing for the recovery of the alleged excess payment, the sanctity of the grounds raised by the respondents on the permissibility for recovery from retired employee, is not addressed.

10. At this juncture, the learned counsel for the petitioner submitted that a part of the amount in the impugned order, which



has already been recovered, has been refunded back to the petitioner. In view of the observations made in this order, no further recovery can be permitted, since the order itself is in violation of the principles of natural justice. However, if the respondents are granted opportunity to issue a fresh show-cause notice, calling for the petitioner's explanation and the issue as to whether recovery could be made from a retired employee, is left open for deliberation, the ends of justice could be secured.

11. In the light of the above observations, the impugned order dated 25.10.2018 is quashed. However, in case the respondents 2 and 3 are of the view that their has been some excess payments made, which they are entitled to recover, liberty is hereby granted to issue a prior show-cause notice for the proposed recovery of the alleged excess payment, within a period of two weeks from the date of receipt of a copy of this order. After issuance of such show-cause notice, the respondents 2 and 3 shall consider the petitioner's objections to the show-cause notice, if any and thereafter take further course of action in accordance with law.

12. The writ petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Secretary to Government of India,
Ministry of Personnel,
Public Grievances & Pensions Department of
Personnel and Training,
New Delhi.

2.The Assistant General Manager,
State Bank of India,
No.112/4, Kalamman Koil Street,
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3.The Branch Manager,
State Bank of India,
Selaiyur Branch,
East Tambaram, Chennai.

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+1cc to M/s.K.Jenitha, Advocate Sr No.36795

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and
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AD (CO)
PR (06/09/2021)