



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.20139 of 2016

and

W.M.P. (MD)Nos.14433 and 14434 of 2016

P.Ayyasamy

... Petitioner

vs.

1.The Joint Registrar of Co-operative
Societies,
Sivagangai, Sivagangai District.

2.The Deputy Registrar of Co-operative
Societies,
Public Distribution System,
Sivagangai, Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned recovery order issued by the second respondent in his proceedings in ந.க.2645/2008/மதேநா, dated 19.05.2016 and to quash the same as illegal and consequentially to direct the respondents to pay the provisional pension in terms of Rule 69 of the Tamil Nadu Pension Rules, 1978, within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned recovery order issued by the second respondent in his proceedings in e.f.2645/2008/gnjh, dated 19.05.2016 and consequentially to direct the respondents to pay the provisional pension in terms of Rule 69 of the Tamil Nadu Pension Rules, 1978, within the period that may be stipulated by this Court.



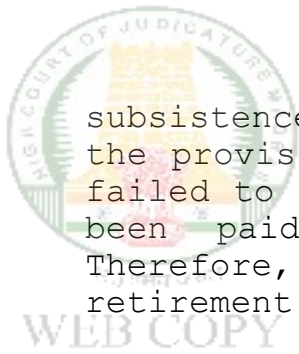
2.The petitioner was appointed as Junior Inspector in Co-operative Societies on 04.08.1986, then promoted as Co-operative Sub Registrar in the year 2000 and has attained superannuation on 30.06.2008. On the eve of retirement, the petitioner was placed under suspension and not allowed to retire from service. The petitioner was issued with three charge memos, dated 13.10.2008, 19.05.2009 and 23.02.2011. The charge memo, dated 23.02.2011 was dropped by the proceedings, dated 18.03.2015. When the Writ Petition was filed, two charge memos were pending. But when this Writ Petition was taken up for hearing, the learned Counsel appearing for the petitioner submitted that the charge memo, dated 13.10.2008, ended up in minor punishment of stoppage of increment of Rs.750/- for one year and the second charge memo, dated 19.05.2009, ended up in imposing a punishment of Rs.1000/- for one year.

3.The issue in this case is that the petitioner was under suspension on 30.06.2008 and during that period, the petitioner was granted subsistence allowance for a period from 01.07.2008 to 01.04.2016, i.e., for a period of 94 months. The petitioner's suspension was revoked, vide order, dated 28.04.2016 and he was allowed to retire. After attaining superannuation, the petitioner is entitled to subsistence allowance, which would be equal to pension payable during that period. But, the respondents have mistakenly paid the subsistence allowance based on the salary entitled to the petitioner. Therefore, there is an excess payment of Rs.4,18,762/-. Therefore, the respondents have passed an order, dated 19.05.2016, directing to recover the excess payment under the head of subsistence allowance paid to the petitioner.

4.The petitioner submitted that since he was retired from service, the excess amount cannot be calculated as per the **White Washers case**. The respondents have filed a counter affidavit stating that the petitioner had agreed to recover the excess amount from his DCRG. However, the petitioner submitted that the letter cannot be relied on because, in the **White Washers case**, it has been stated that any amount cannot be recovered from a retired person.

5.Heard Mr.C.Venkatesh Kumar, learned Counsel appearing for the petitioner and Mr.D.Sachi Kumar, learned Additional Government Pleader appearing for the respondents.

6.The case of the petitioner is that the excess payment of subsistence allowance is not his fault and the employer has deliberately paid the excess amount. The excess amount was paid during the period of suspension and during that period, the petitioner had attained superannuation. Then, the subsistence allowance ought to have been modified, which have to be equivalent to the provisional pension. Since the petitioner was serving the Government for more than 23 years, he would definitely know that the



subsistence allowance ought to be modified which is equivalent to the provisional pension. The petitioner has deliberately, unjustly failed to intimate the excess payment. The said payment might have been paid after the superannuation, but, before retirement. Therefore, the plea that the amount is being deducted after retirement cannot be taken into account.

7.The excess payment need not be based on misrepresentation or fraud, but may be change in the status of the petitioner. Then, the petitioner is also responsible for wrong fixation. We are concerned with the excess payment of public money, which belongs neither to the Officers, who have effected the over payment, nor the recipients. The payments are being effected without any authority of law and equally the payments are being received without authority of law. If the subsistence allowance had been paid below the eligibility, the petitioner would have agitated for his rights. Since that had been paid in excess, the petitioner ought to have reported to the respondents that they have fixed excess payment under the head of subsistence allowance. So, there is a fault on the part of the petitioner also. More so, the petitioner was serving as a Co-operative Sub Registrar, which is a managerial cadre. In short the Sub Registrar has to manage the entire unit under him and the payment of salary also ought to have been paid by him. So, he will have a clear knowledge. Therefore, he cannot make a plea that there is no fault or misrepresentation on his part.

8.Therefore, this Writ Petition is rejected and the excess payment shall be deducted from his terminal benefits and the balance amount shall be paid to the petitioner. The said payment shall be made within a period of six weeks from the date of receipt of a copy of this order.

9.Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

Tmg

To

1.The Joint Registrar of Co-operative
Societies,
Sivagangai, Sivagangai District.

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



2.The Deputy Registrar of Co-operative
Societies,
Public Distribution System,
Sivagangai, Sivagangai District.

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+1 CC to M/s.SPL GP (SR-39045[F] dated 16/12/2021)

W.P. (MD) No.20139 of 2016
15.12.2021

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