



WEB COPY

W.P.(MD)No.18291 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.18291 of 2017

and

W.M.P. (MD)No.5042 of 2018

R.Arockiam

... Petitioner

vs.

1.The Director of School Education
College Road,
Chennai-600 006.

2.The District Education Officer,
Gobichettipalayam,
Erode District.

3.The Accountant General,
361, Anna Salai, Tamil Nadu
Teynampet,
Chennai-600 018.

4.The District Treasury Officer,
Dindigul District, Dindigul.

5.The Assistant Treasury Officer,
Sub Treasury,
Vedasandur, Dindigul 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 pertaining to the impugned order in Oo.Mu./2017/Aa, dated 20.06.2017, on the file of the fifth respondent and to quash the same and to direct the fifth respondent to refund the recovered amount from 01.06.2017 onwards as per the impugned order.

For Petitioner	: Mr.N.Tamilmani
For R-1, 2, 4 and 5	: Mr.M.Linga Durai Government Advocate
For R-3	: Mr.P.Gunasekran Standing Counsel

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 20.06.2017, passed by the fifth respondent and to direct the fifth respondent to refund the amount recovered from the petitioner from

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



01.06.2017.

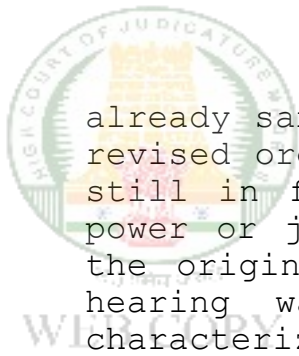
2.Heard Mr.N.Tamilmani, learned Counsel appearing for the petitioner, Mr.M.Linga Durai, learned Government Advocate appearing for respondents 1, 2, 4 and 5 and Mr.P.Gunasekran, learned Standing Counsel appearing for the third respondent.

3.Brief facts, that are necessary for the purpose of disposal of this Writ Petition, are as follows:

3.1.The petitioner was appointed as Secondary Grade Teacher in the year 1964 in Sri Murugan Middle School, Palayam, Veda sandur Taluk, Dindigul District, which is an aided School. Subsequently, during the year 1966, the petitioner was transferred to another School, as Secondary Grade Teacher. The petitioner was promoted as B.T.Assistant (History) in St.Mary's High School, Kolapallur, Erode District, in the year 1982. The petitioner was granted Selection Grade B.T.Assistant in the year 1992 and retired from service on attaining the age of superannuation on 30.04.1998. After retirement, the petitioner submitted an application to revise his pension in terms of G.O.Ms.No.235, Finance (Pc) Department, dated 01.06.2009. Based on the representation of the petitioner, it appears that the second respondent, who is the pension sanctioning Authority, revised the petitioner's pay in the pay band of Rs.15,600-39,100+5400 (Grade Pay) and the pension for the petitioner was fixed at Rs.10,500/- with effect from 01.01.2006. On the date of filing the present Writ Petition, the petitioner admitted that he is getting a monthly pension of Rs.24,650/-.

3.2.By the impugned order passed by the fifth respondent, the petitioner's pay was revised and pension was recalculated to fix at Rs.9,300-34800+4800 (Grade Pay). Stating that the excess amount has been paid to the petitioner towards pension from 01.01.2011 to 31.05.2017, the impugned order was passed to recover the amount allegedly paid in excess to the petitioner. Since the pension payable to the petitioner as on 01.01.2011 was only a sum of Rs.9,153/-, the fifth respondent has informed the petitioner that the excess amount is to be recovered from the month of January, 2017 at the rate of Rs.12,448/- per month for sixteen months. After the impugned order, the petitioner submitted his written representation to the fifth respondent stating that the Government Letter cited in the impugned order is not applicable to the petitioner. However, without considering the representation of the petitioner, the respondents started deducting a sum of Rs.12,448/- from the month of June 2017. Hence, challenging the impugned order, the present Writ Petition is filed.

4.It is the case of the petitioner that the impugned order passed by the fifth respondent is erroneous and in violation of principles of natural justice. It is further contended that the



already sanctioned by the second respondent. Pointing out that the revised order passed by the second respondent, dated 08.11.2014, is still in force, it is contended that the fifth respondent has no power or jurisdiction to re-fix or revise the pay scale and modify the original assessment. Stating that no opportunity of personal hearing was given to the petitioner, the impugned order is characterized as illegal.

5.The learned Counsel appearing for the petitioner submitted that the order of recovery was issued by the fifth respondent, who has no authority. From the impugned order, it is seen that the order has been signed by the fifth respondent. The communication is an information to the petitioner that a sum of Rs.2,02,753/- is to be recovered from the pension of the petitioner. The recovery order may ultimately be justified for valid reasons. But, there must be a fair enquiry or hearing before passing any order affecting the petitioner's right.

6.The learned Counsel appearing for the petitioner relied upon a judgment of the Honourable Supreme Court in Civil Appeal No.11527 of 2014 and batch, in the leading case of **State of Punjab and Orissa vs Rafiq Masih**, wherein it is held as follows:

"12. 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 19 Page 20 that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i)Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii)Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii)Recovery from 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 be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13.We are informed by the learned counsel representing

the appellant State of Punjab, that all the cases in this



bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by 20 Page 21 the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms."

7. However, the learned Counsel for the respondent relied upon a judgment of the Honourable Supreme Court in the case of **Chandi Prasad Uniyal and others vs State of Uttarakhand and others** reported in **AIR 2012 SC 2951**, the Honourable Supreme Court has observed as follows:

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without any authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered views that except few instances pointed out in Syed Abdul Qadir case (2009 AIR SCW 1871) (supra) and in Col. B. J. Akkara (Retd.) case (2016 AIR SCW 5252) (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

8. This Court considered the grounds raised in the Writ Petition. This Court had an occasion to follow the judgments of the Honourable Supreme Court to reiterate that no recovery order can be issued without giving an opportunity to the delinquent. Having regard to the admitted facts, this Court is of the view that the recovery order without issuing notice to the petitioner is not permissible and therefore, on the short ground of violation of



principles of natural justice, the impugned order is liable to be quashed.

9. Accordingly, the Writ Petition is allowed and the impugned order, dated 20.06.2017, is quashed. However, the respondents shall proceed afresh to decide whether any excess payment is made to the petitioner and recover, after giving sufficient opportunity to the petitioner and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar (CS)

tmg/cmr

To

1. The Director of School Education
College Road,
Chennai-600 006.

2. The District Education Officer,
Gobichettipalayam,
Erode District.

3. The District Treasury Officer,
Dindigul District, Dindigul.

4. The Assistant Treasury Officer,
Sub Treasury,
Vedasandur, Dindigul District.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-31720[F] dated 08/10/2021)

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08.10.2021

VR (CO)

RS/JGB (02.11.2021) 5P 6C