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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17611 of 2015
and
M.P.No.2 of 2015

K.Sivasubramanian

...Petitioner

Vs

1. The Chief Manager,
Centralized Pension Processing
Centre, Indian Bank,
Rajaji Salai, Chennai - 600 001.
2. The Chief Manager,
Indian Bank,
No.4, Bharathi Road,
AVR Towers,
Cuddalore - 607 001.
3. Union of India,
Rep. by its Defence Secretary,
Govt. of India,
Ministry of Defence-D (Pension
and Grievances),
535, A-Wing, Sona Bhawan,
New Delhi - 110 011.
4. The Controller of Defence Accounts,
Air Force General Account Office,
New Delhi - 110 066.
5. The Controller of Defence Accounts,
No.618, Anna Salai, Teynampet,
Chennai - 600 018.
6. The Senior Accounts Officer (Pension),
O/o.The Principal Controller of
Defence Accounts (PCDA),
Draupadi Ghat, Allahabad - 211014.
7. The Accounts Officer,
CDA (Pension), Teynampet,
Chennai - 600 018.



8. The Commanding Officer,
Air Force Station,
No.23, E.D., Avadi, Chennai.

(R3 to R8 are impleaded vide order
dated 04/04/19 made in WMP.No.
9978/19 in WP.No.17611/15)

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent pertaining to his order made in No.Nil dated Nil received on 24.07.2013 and quash the same consequent to direct the respondents to refund the amount of recovery effected from the monthly pension of the petitioner from July 2013 onwards at the rate of Rs.2,100/- per month.

For Petitioner : Mr.R.Malaichamy

For R1 & R2 : Mr.M.L.Sripathi

For R3 to R8 : Mr.V.Balasubramanian, SPC

ORDER

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

2. The order impugned in the present writ petition is one for recovery of a sum of Rs.1,22,206/-, which amount is alleged to be an excess payment made to the petitioner, who is a pensioner, with effect from 01.07.2009 to May, 2013.

3. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has categorically held that recovery from the pensioners, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

"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 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'



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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."

4. The petitioner herein is a pensioner, who had retired on 09.10.1971. The present impugned recovery order is on the basis of an inspection on pension payment conducted in the year 2013 by the Reserve Bank of India, which is after 42 years. In view of the law laid down by the Hon'ble Supreme Court in White Washer's case (supra), the order of recovery against a pensioner, cannot be sustained.

5. At this juncture, the learned Standing Counsel appearing for the respondents 3 to 8 would submit that in view of Section 34 of the Armed Forces Tribunal Act (hereinafter referred to as 'the Act'), the writ petition requires to be transferred to the Armed Forces Tribunal and if at all the petitioner is aggrieved against the impugned recovery proceedings, it will be open to him to address his grievances before the Tribunal.

6. It is no doubt true that Section 34 of the Act provides for transfer of all the pending cases before the High Court to the Tribunal. In normal circumstances, when the legality of the proceedings initiated in the impugned recovery order is debatable, this Court would have invoked Section 34 of the Act and transferred the matter back to the Tribunal. However, in the instant case, the error committed by the respondents in the impugned recovery is apparently illegal, in view of the well laid down decision of the Hon'ble Supreme Court in the White Washer's case. Even if the matter is now transferred to the Tribunal, it would only be a futile exercise, since the Tribunal may have no other alternate, but to quash the impugned recovery proceedings. In this background, this Court is of the view that the extraordinary



powers under Article 226 of the Constitution of India can be invoked to avoid the prejudice and hardship that could be caused to the petitioner, who is now aged about 75 years, to avoid going before the Armed Forces Tribunal. As such, the objection raised by the learned Standing Counsel is rejected.

7. At this juncture, the learned counsel for the petitioner would draw attention of this Court to Paragraph 6 of the additional counter affidavit dated 15.07.2019, filed by the sixth respondent herein, wherein it is stated that after merger of 50% of Dearness Relief with Basic Pension, the petitioner is entitled to basic pension at the rate of Rs.3,500/- per month with effect from 01.01.2006 to 31.12.2015 and at the rate of Rs.9,000/- per month with effect from 01.01.2016 onwards.

8. The impugned order has revised the petitioner's basic pension at Rs.3,500/- with effect from 01.07.2009. If that be so and if the stand taken by the respondent is applied to the petitioner, he would be entitled for the basic pension at the rate of Rs.3,500/- from 01.01.2006 to 31.12.2015 and at the rate of Rs.9,000/- per month with effect from 01.01.2016 onwards. In this connection, the petitioner is granted liberty to make an appropriate application to the fourth respondent or any other appropriate authority, seeking for the revised pension as stated above and on receipt of such an application, the concerned authority shall pass favourable orders in accordance with the stand taken by them in their additional counter affidavit dated 15.07.2019, within a period of two (2) weeks from the date of receipt of such an application.

9. With the above liberty, the impugned recovery order dated Nil passed by the second respondent herein is quashed. In case any recovery has already been effected, the second respondent shall forthwith refund the recovered amount to the petitioner, within a period of two (2) weeks from the date of receipt of a copy of this order.

10. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

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+2ccs to Mr.V.Balasubramanian, Advocate SR. No.3863

+1cc to Mr.R.Malaichamy, Advocate SR. No.4060

W.P.No.17611 of 2015
and
M.P.No.2 of 2015

PCH (CO)
PR (08/02/2022)