



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO.11098 OF 2020

AND

W.M.P.NO.13535 OF 2020

P.Subramanian

... Petitioner

vs.

1. The Accountant General (A&E),
361, Anna Salai,
Teynampet, Chennai - 18.

2. The Assistant Treasury Officer,
Alandur, Kancheepuram District.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents from withholding or effecting any recovery from the petitioner's pension account No.C266952 and to consequently direct the respondents to continue the pension paid to the petitioner prior to March, 2020.

For Petitioner : Mr.Swarnam J Rajagopalan

For Respondents: Mr.V.Vijayshankar (for R1)

Mrs.S.Anitha
Special Government Pleader (for R2)

O R D E R

This writ petition has been filed seeking to issue a Writ of Mandamus, forbearing the respondents from withholding or effecting any recovery from the petitioner's pension Account No.C266952 and consequently, to direct the respondents to continue the pension paid to the petitioner prior to March, 2020.



2. The short ground involved in the present writ petition is that the 2nd respondent has recovered the amount from the petitioner's monthly pension, without giving any opportunity to the petitioner nor any order has been passed. In the light of the decision of the Hon'ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, no opportunity has been granted by the 2nd respondent, therefore, the order of recovery lacks legal infirmity and hence, the same is liable to be set aside.

3. The learned counsel appearing for the petitioner submitted that even the petitioner comes under Group-A category, the 2nd respondent has to follow the principles of natural justice by affording an opportunity to the petitioner to submit his explanation before the authority concerned.

4. The 2nd respondent has filed counter affidavit, but nowhere stated that the recovery order has been passed by the 2nd respondent. It is further stated in the counter affidavit that the petitioner being the Joint Director of Agriculture, therefore, he does not come under Group-C and Group-D service in the light of decision of the Hon'ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 and he is comes under Group-A category. Therefore, there is no illegality in the order of recovery of the petitioner's pension amount.

5. The learned Special Government Pleader appearing for the 2nd respondent has not controverted that the order of recovery has been passed by the 2nd respondent. Further, there is no materials placed before this Court to show that the recovery order has been passed by the 2nd respondent.

6. In view of the above submissions made by the parties, this Court without any hesitation, come to the conclusion that without passing the recovery order, the 2nd respondent shall not recover the monthly pension amount from the writ petitioner. Hence, the impugned recovery order is liable to be quashed on the ground of violation of principles of natural justice.

7. In view of the above, this Court is inclined to pass the orders, as follows:-

- (i) The 2nd respondent shall issue show cause notice to the petitioner by pointing out the reasons for recovery of the petitioner's pension amount, within a period of four weeks from the date of receipt of a copy of this order.
- (ii) On such show cause notice received by the petitioner, the



petitioner shall submit his explanation as early as possible within a period of six weeks.

(iii) Thereafter, the 2nd respondent is directed to pass appropriate orders as expeditiously as possible, in accordance with law. Till such time, the 2nd respondent shall not recover the amount from the monthly pension of the writ petitioner.

8. With the above directions, the writ petition stands allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dm

To

1. The Accountant General (A&E),
361, Anna Salai,
Teynampet, Chennai - 18.
2. The Assistant Treasury Officer,
Alandur,
Kancheepuram District.

+1cc to Mr.V.Vijayshankar, Advocate, S.R.No.20886
+1cc to Mr.Swarnam J Rajagopalan, Advocate, S.R.No.20551
+1cc to the Government Pleader, S.R.No.21068

W.P.No.11098 of 2020

BP(CO)
PM/21/04/2022