IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2022

Coram:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.16106 of 2021

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R.Mani
Assistant Treasury Officer (Rtd). .. Petitioner

Vs.

1. The Secretary to Government,
   Finance and Accounts Department,
   Fort St.George, Chennai-9.

2. The Commissioner,
   Treasuries and Accounts Department,
   Veterinary Hospital Complex Building,
   Nandanam, Chennai-600 035.

3. The Treasury Officer,
   District Treasuries,
   Cuddalore and District.

4. The Assistant Treasury Officer,
   Sub-Treasury,
   Chidambaram, Cuddalore District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.2617/2020/E1, dated 16.09.2020 and quash the same and consequently direct the respondents to refund the recovered amount of Rs.6,12,053/- from the petitioner's Death-cum-Retirement Gratuity along with interest of 12% per annum.

For petitioner : Mr.S.Gunasekaran
For respondents: Mr.V.Ravi, Spl.G.P.

ORDER

This Writ Petition has been filed challenging the impugned recovery order, dated 16.09.2020 issued against the petitioner, under which, a sum of Rs.6,12,053/- has been recovered from and out of his retirement benefits, on account of the reason that he had revised the pension payable to six pensioners and had granted arrears of pension to them erroneously.

2. The petitioner was working as Accountant at the Sub-Treasury, Kattumannarkoil. When he was having authority to issue pension orders, while in service as Accountant at the Sub-Treasury, Kattumannarkoil, it has been alleged that he has revised the pension orders erroneously to six pensioners and has also sanctioned the arrears of pension to them. The following are the details of six pensioners who have been paid the excess amount:

(i) Tvl.D.Nagarajan Rs.1,97,655/-

(ii) P.Govindasamy Rs.2,06,546/-

(iii) P.Anbumani Rs.2,32,312/-

(iv) G.Thangaraj Rs.2,66,969/-

(v) P.Mohan Kumar Rs.2,32,312/-

(vi) A.Vaithiyanathan Rs.2,32,312/-

The excess amount paid to the pensioners pursuant to the revision of pension orders, had been recovered from the petitioner pursuant to the impugned order.

3. Earlier, one of the pensioners, namely Mohan Kumar, who according to the respondents, was paid excess pension amount, had filed a Writ Petition in W.P.No.21556 of 2015 before this Court challenging the deduction made by the respondents from and out of the monthly pension payable to him on account of the excess payment alleged to have been made by him earlier. A learned Single Judge had quashed the order of recovery, dated 04.06.2015 passed by the respondent therein against Mr.Mohan Kumar. Aggrieved by the order dated 16.08.2017 passed in W.P.No.21556 of 2015, the State/respondents preferred Writ Appeal in W.A.No.1669 of 2019 and in the judgment dated 06.06.2019 passed in W.A.No.1669 of 2019, a Division Bench of this Court remitted the matter back to the third respondent (Treasury Officer) for fresh consideration and a direction was issued to the third respondent to issue show cause notice to Mohan Kumar and after inviting his objections and after affording personal hearing to him, thereafter pass orders thereon.

4. The petitioner who was an Accountant at the Sub-Treasury Officer, Kattumannarkoil, who is alleged to have issued the order to the pensioners revising their pension erroneously, has filed this Writ Petition. Under the impugned order, dated 16.09.2020 passed by the third respondent, a sum of Rs.6,12,053/- has been recovered from him on account of the alleged excess payment given to the pensioners by issuance of erroneous revision of pension order to them.

5. The petitioner has challenged the impugned order on the ground that the respondents ought to have issued a show cause notice to him and should have granted an opportunity of hearing to him including the personal hearing as was done pursuant to the directions given by the Division Bench of this Court on 06.06.2019 in Writ Appeal No.1669 of 2019 to Mr.Mohan Kumar, the pensioner who is alleged to have received the excess pension.

6. The petitioner has challenged the impugned order on the ground that the respondents have violated the principles of natural justice and they have not adhered to the directions given by the Division Bench of this Court on 06.06.2019 in W.A.No.1669 of 2019, as was done to Mr.Mohan Kumar, one of the pensioners.

7. A counter affidavit has been filed by the respondents denying the allegations of the petitioner. They reiterated that only due to the reason that the petitioner had issued the erroneous pension orders revising the pension of six pensioners, which resulted in loss of exchequer, the impugned order has been passed to recover the excess amount erroneously paid to six pensioners.

8. Admittedly, the Division Bench of this Court, by judgment dated 06.06.2019 in Writ Appeal No.1669 of 2019 involving the Writ Petition filed by one of the pensioner, by name Mohan Kumar, had remitted the matter back to the third respondent for fresh consideration and the third respondent was directed to issue show cause notice to the pensioner-Mohan Kumar, inviting his objections and afford personal hearing to him, and only thereafter, final orders were directed to be passed by the third respondent,

9. The petitioner, who the respondents allege was instrumental in issuance of erroneous pension orders, which resulted in payment of excess amount to Mr.Mohan Kumar, ought to have been given an opportunity of personal hearing to submit his explanation as was done earlier to Mr.Mohan Kumar, the pensioner.

10. As seen from the impugned order, such an opportunity of hearing and an opportunity to submit the explanation, had not been given to the petitioner, who was working as Accountant at the Sub-Treasury, Kattumannarkoil, when the pension orders under which the respondents claim excess amounts, were made to six pensioners.

11. The amount of Rs.6,12,053/- has already been admitted upon recovery from the petitioner. As seen from the impugned order, there is a document dated 24.04.2020 under which the petitioner is said to have admitted his liability. However, the learned counsel for the petitioner submitted that only under coercion and undue influence, the petitioner had given such a letter. The petitioner now disputes that he had admitted his guilt of having issued the erroneous pension orders.

12. This Court cannot quash the impugned order in this Writ Petition, in view of the fact that the respondents have already recovered the amount. The only relief that can be granted in favour of the petitioner is that he will have to be given an opportunity to submit his explanation with regard to the allegations levelled against him by the respondents and thereafter, the respondents shall consider the said explanation on merits and in accordance with law, after affording an opportunity of fair hearing to him, including granting him personal

hearing.

13. In the light of the directions given by the Division Bench of this Court on 06.06.2019 in W.A.No.1669 of 2019, involving the Writ Petition filed by one of the pensioners, namely Mohan Kumar, the impugned order can be treated as show cause notice issued to the petitioner to enable him to submit his explanation.

14. For the foregoing reasons, the Writ Petition is disposed of, directing the petitioner to submit his explanation with regard to the impugned order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation, the third respondent is directed to pass final orders on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, including a personal hearing to the petitioner, within a period of six weeks thereafter. In case the third respondent comes to the conclusion that erroneously a sum of Rs.6,12,053/- has been recovered from the petitioner, the same shall be refunded to the petitioner within a period of eight weeks thereafter.

15. There shall be no order as to costs.

07.11.2022

Index: Yes/no

Speaking Order: Yes/no

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ABDUL QUDDHOSE, J

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