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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.389 of 2020
and
W.M.P.(MD)Nos.302, 303 and 9628 of 2020

M.Raju ... Petitioner

Vs.

1. The Commissioner,
   Treasuries and Accounts Department,
   Integrated Finance Department Buildings,
   Nanthanam,
   Chennai - 600 035.

2. The Treasury Officer,
   Office of the Treasury Office,
   Tiruchirappalli,
   Tiruchirappalli.

3. The Additional Treasury Officer,
   Office of the Treasury Office,
   Tiruchirappalli,
   Tiruchirappali. ... Respondents

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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order issued by the second respondent in his proceedings No.L.Dis.2083/2019/T3 dated 26.07.2019 and the consequential impugned order passed by the second respondent vide proceedings in செ.மு.ஆ.எண்/21212/2019/T3 dated 16.12.2019 and quash the same.

For Petitioner	:	Mr.H.Mohammed Imran for M/s.Ajmal Associates
For Respondents	:	Ms.K.Christy Theboral Additional Government Pleader

O R D E R

The impugned orders passed by the second respondent vide proceedings in L.Dis.No.2083/2019/T3, dated 26.07.2019 and செ.மு.ஆ.எண்/21212/2019/T3இ dated 16.12.2019 are under challenge in the present Writ Petition.

2. The case of the petitioner is that the petitioner was initially appointed as Secondary Grade Teacher on 16.11.1978 at Government ADW Elementary School, Thoothur. At the time of his retirement, his designation

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was Secondary Grade Teacher (Special Grade) and he attained the age of superannuation on 31.08.2004. After his retirement, his pension was revised with effect from 01.01.2007 as per G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 and he was receiving the pension without any default. While so, the second respondent passed an impugned order on 26.07.2019, whereby, his original pension was reduced and the excess amount was directed to be recovered. Challenging the same, the present Writ Petition.

3. The learned counsel for the petitioner submitted that initially the second respondent passed an impugned order on 26.07.2019, for which, the petitioner has given explanation. Thereafter, a notice dated 18.11.2019 was issued by the third respondent directing the petitioner to remit the excess amount of Rs.2,51,292/-. In compliance with the notice dated 18.11.2019, he appeared before the third respondent on 26.11.2019 and gave a statement in writing. However, the third respondent has refused to give acknowledgement therefor. But, without considering the above aspects, the second respondent has mechanically passed another impugned order

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dated 16.12.2019, which is not sustainable one. Earlier, a show cause notice was issued to the petitioner which was not revealed in the impugned orders dated 26.07.2019 or 16.12.2019 and the second respondent has disbursed the retirement benefits in terms of G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 and there is no mis-representation on the part of the petitioner. Even, no documents are filed before this Court by the respondents as if the petitioner has made mis-representation and received the benefits in terms of G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 and accordingly, he prayed for an appropriate orders.

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner has misrepresented the fact that he lastly served as Selection Grade Headmaster instead of Secondary Grade Teacher in his application form. Based on his misrepresentation, the excess payment has been made to him. On coming to know about the fact that while retiring from the service, the petitioner was working as Secondary Grade Teacher, the first respondent was instructed to recover the excess payment paid to the writ petitioner. In fact, before issuing the recovery

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order, a proper notice has been issued to the writ petitioner on 26.07.2019 and the petitioner also appeared in person before the second respondent and gave his explanation which is not satisfactory. Hence, the impugned recovery order has been issued and there is no fault on the part of the respondents.

5. Heard the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was initially appointed as Secondary Grade Teacher on 16.11.1978 at Government ADW Elementary School, Thoothur and he retired as Headmaster on 31.08.2004 and was receiving pension through District Treasury, Trichy. However, it is alleged that the petitioner has mis-represented the fact that he had lastly served as Selection Grade Headmaster instead of Secondary Grade Teacher in his application form and based on his alleged mis-representation, the excess payment has been made to him which sought to be recovered by way of the impugned orders.

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7. However, the impugned orders dated 26.07.2019 and 16.12.2019 do not indicate any show cause notice to the petitioner before passing them and without any issuing show cause notice and without getting any explanation from the petitioner, the second respondent has passed the impugned recovery orders which are not sustainable in law and is clearly violation of principles of natural justice. The same is liable to be interfered. In this regard, it is relevant to refer to the decision of the Hon'ble Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in ***2015 (4) SCC 334***, which reads as under:

> *".....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 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*

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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."

8. A perusal of the above decision shows that the petitioner being the Class-III employee, is entitled to get the benefits. Whereas, the decision of the Hon'ble Apex Court makes it clear that recovery from the retired employees or the working employees who are due to retire within one year of the order of recovery or the recovery from the employees when the excess payment has been made for the period in excess of five years before the order of recovery is issued or 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, would be impermissible in law.

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9. In the present case, admittedly, the petitioner retired from service in the year 2004. However, the recovery order has been passed after a lapse of 15 years. Hence, taking into consideration the ratio laid down by the Hon'ble Apex Court in the case of *White Washer (supra)* and the fact that the recovery of excess payment from the retired employees would be impermissible in law, this Court is inclined to set aside the impugned orders dated 26.07.2019 and 16.12.2019 and accordingly, are set aside.

10. With the above observations, this Writ Petition is allowed and the petitioner is at liberty to initiate proceedings in terms of the Pension Rules. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.12.2022

Index : Yes / No
Speaking Order : Yes / No

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