



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.8908 of 2020

and

W.M.P.(MD) Nos.8155, 8156 & 11136 of 2020

S.Jeyaram

... Petitioner

-VS-

1.The Director of Survey and Settlement,
Survey House,
Chepauk, Chennai-600 005.

2.The Joint Director and Regional Deputy
Director of Survey (Incharge),
Madurai Region, Madurai-625 020. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 1st and 2nd respondents, i.e., the Director of Survey and Settlement, Chennai in ந.க.ஞ.4/25249/2019 (நி.அ) நாள் : 24.02.2020 and the Joint Director and Regional Deputy Director of Survey and Land Records (Incharge), Madurai in ந.க.அ5/1381/2019(1) நாள் : 14.07.2020 and quash the same regarding recovery alone since the petitioner has no objection for the refixation of pay already done in all the cadres.

For Petitioner: Mr.S.Visvalingam

For Respondents: Mr.A.K.Manikkam,
Special Government Pleader

O R D E R

The order of recovery issued to the writ petitioner after his retirement in proceedings dated 24.02.2020 and the consequential order dated 14.07.2020 are under challenge in the present writ petition.



2.The writ petitioner was lastly serving as Deputy Director of Survey, Madurai Region, Madurai and retired from service on attaining the age of superannuation on 30.04.2019 and he was allowed to retire. The pay fixation done in the cadres of Sub Inspector of Survey, Deputy Inspector of Survey and Inspector of Survey with effect from 01.11.1989, 01.04.2008 and 08.03.2011 respectively was questioned by the audit officials and based on the objections, the impugned order of recovery has been issued.

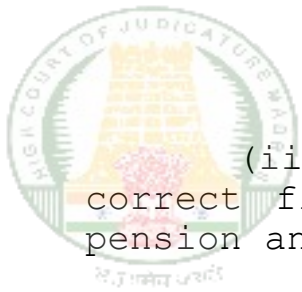
3.The learned counsel for the petitioner made a submission that the fixation done long back even if found to be erroneous, excess amount paid to the writ petitioner cannot be recovered after his retirement.

4.This Court is of the considered opinion that the fixation done during the relevant point of time by the establishment, if found to be erroneous shall be correct however, the excess amount paid to the employee cannot be recovered after a lapse of many years and in the present case, it is after the retirement and therefore, such recovery cannot be sustained. In the event of recovering such an excess amount after so many years, the same will result in hardship to the petitioner. The principles in this regard are settled by the Hon'ble Supreme Court of India in number of cases. The recovery can be imposed in such cases where there is a misrepresentation on the part of the employee or the employee has given an undertaking to repay the excess the amount, if any paid. In the absence of any one of these grounds, recovery cannot be imposed merely on the ground of audit objection.

5.In the present case, the alleged error occurred when the petitioner was in service and the impugned order of recovery has been issued after the retirement of the writ petitioner. No doubt, the errors crept in can be corrected at any point of time. However, the recovery cannot be imposed after the retirement of an employee.

6.This being the factum, this Court is inclined to pass the following orders:-

(i) The impugned order dated 24.02.2020 passed by 1st respondent and the order dated 14.02.2020 passed by the 2nd respondent are quashed with reference to the recovery alone;



(ii) The respondents are directed to implement the correct fixation already done for the purpose of payment of pension and all other benefits; and

(iii) The excess amount already made to the writ petitioner cannot be recovered.

With the above observations and directions, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

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/ /2022

Sub Assistant Registrar(CS)

abr

To

1.The Director of Survey and Settlement,
Survey House,
Chepauk, Chennai-600 005.

2.The Joint Director and Regional Deputy
Director of Survey (Incharge),
Madurai Region, Madurai-625 020.

+1 CC to M/s.SPL GP (SR-8046[F] dated 23/02/2022)

W.P. (MD) No.8908 of 2020
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TR(08.03.2022) 3P 4C