BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.02.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD)No.25122 of 2019
and
W.M.P.(MD)Nos.21723 of 2019 and 9589 of 2020

T.P.Vanamamalai ... Petitioner

-Vs-

1.The Principal Secretary / Commissioner of
Treasuries and Accounts Department,
Integrated Finance Complex 3rd Floor,
No.571, Anna Salai, Nandanam, Chennai.

2.The Inspection Cell,
Commissioner of Treasuries and Accounts Department,
Integrated Finance Complex 3rd Floor,
No.571, Anna Salai, Nandanam, Chennai.

3.The Additional Sub Treasury Officer,
Sub Treasury, Srirangam, Trichy District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in R.C.No.32348/ICI/2019, dated 30.09.2019 insofar as the petitioner is concerned and the consequential impugned recovery order passed by the 3rd respondent in R.C.No.758/A/2019, dated 17.10.2019 and quash the same.

For Petitioner : Mr.R.Subramanian
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader.

ORDER

The order of recovery passed by the first respondent and third respondent by proceedings dated 30.09.2019 and 17.10.2019 respectively, are under challenge in the present Writ Petition.

2.The petitioner was holding the post of Lecturer (Selection Grade) and after serving more than 36 years, he was allowed to retire from service and also receiving pension. The petitioner states that recovery order was issued without any show cause notice to the writ petitioner. The petitioner has taken a specific ground that he was not heard and no opportunity was given and therefore, the impugned order is in violation of principles of natural justice.

3.Interestingly, the Principal Secretary / Commissioner of Treasuries and Accounts Department / first respondent has filed counter affidavit, categorically setting out the facts and circumstances, wherein it is stated that the first respondent has issued instructions to recover the excess payment. Before issuing the recovery order, a proper notice has been issued to the petitioner vide Ltr.Rc.No.758/A/2019, dated 17.10.2019 of the third respondent and the writ petitioner made a representation on 24.10.2019 and requested for the copies of the audit notes and the same has been served on person. In this regard, the inspection report of the second respondent / Inspection Cell, Principal Secretary / Commissioner of Treasuries and Accounts, Chennai also categorically states as follows:-

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completed three years in the Selection Grade Lecturer post. So, he is not entitled for pension in the pay band 37400-67000+9000GP from 01.01.2007 onwards. However, he is eligible for getting the minimum pension as per G.O.Ms.No.106 Higher Education [H1] Department, dated14.05.2015 in the pay band Rs.37400-67000+9000GP from 01.04.2015 onwards. The Government also direct that the above pension/family pension revision shall be given effect from the month of April 2015.This has resulted as Excess Payment from 01.01.2007 to 31.03.2015 to the tune of Rs.16,09,176/- to the writ petitioner. Therefore a monthly recovery of Rs.26,000/- from the month of October, 2019 for 62 months has been ordered.

5. With regard to the averment made by the petitioner in paragraph 3 of the affidavit, it is submitted that the 1st respondent herein instructed to recover the excess amount paid to the writ petitioner. Before issuing the recovery order proper notice has been issued to the petitioner vide Ltr.Rc.No.758/A/2019 dated:17.10.2019 of the 3rd respondent herein and the writ petitioner made an representation on 24.10.2019 and requested for the copies of the Audit Notes and the same has been served on person. In this regard, it is submitted that the inspection report of the 2nd Respondent herein viz., Inspection Cell of Principal Secretary/ Commissioner of Treasuries and Accounts, Chennai as follows:

SELECTION GRADE LECTURERS/PROFESSORS RETIRED PRIOR TO 31.12.1988

The following pensioner's pension have been revised and paid as per Para 2(VI) of G.O.235 in the pay band 37400+9000GP from 01/2007.

As per G.O.Ms.No.1785, Education (H-3) Dept& as per Govt. Letter 2D/No46/Higher Edn/H1 dept, dated 06.12.1988, the nomenclature of professor has been re-designed as Lecturer (Selection Grade) from 01.01.1986 onwards. As such, three years in the cadre of Lecturer Selection Grade has been completed on 31.12.1988. But, the following pensioners have been retired from service before the above said date. They have not completed three years in the cadre of Lecturer Selection Grade at the time of their retirement. As per Govt. Letter No.2D/46/Higher Edn/H1 dept dated 13.04.2010 only Lecturer Selection Grade with three years is eligible to revise their pension at Rs.23200/- in the pay band 37400-6700+9000 GP. As they retired from service before 12/1988 they were not able to complete three years in the Selection Grade Lecturer post. So, they are not entitled for pension in the Pay band 37400-6700+9000 GP from 01.01.2007 onwards. However, they are eligible for getting the minimum pension

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No of corrections: Nil

Personal Assistant (Treasury Control)
to Principal Secretary/Commissioner
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Nandanam, Chennai-600 035.

Commissioner of Treasuries and Accounts
Government of Tamil Nadu
Nandanam, Chennai-600 035.

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as per G.O.106/2015 in the pay band Rs.37400-6700+9000 GP from 01.01.2007 to 31.03.2015 of Rs.76, 49, 527/- made to them as worked out in annexure which is brought to notice for necessary action.

Sl.Nos	Name	PPO	From	To	Due	DRN	Excess
1.	**Vanamamalai**	**T90003**	01.01.07	**31.03.15**	**13647**	**23200**	**1433808**
	Vanamamalai	**T90003**	01.01.11	**31.03.15**	**2729**	**4640**	**175368**
2.	Vasantha	TF68561	01.01.07	13.02.16	13416	22497	1324289
	Vasantha	TF68561	01.01.11	13.02.16	2683	4493	158391
3.	Ramanathan	C302644	01.01.07	31.03.15	17941	23200	769318
	Ramanathan	C302644	01.01.11	31.03.15	3588	4640	96549
4.	Janaki	TF64283	01.01.07	16.09.07	13630	19333	47489
	Janaki	TF64283	17.09.07	31.03.15	8136	13920	512409
5.	Natarajan	T62063	01.01.07	31.03.15	13609	23200	1439517
	Natarajan	T62063	01.01.11	31.03.15	2722	4640	178007
6.	Mythili	TF53777	01.01.07	31.03.15	12741	19585	1042221
	Mythili	TF53777	01.01.11	31.08.13	2648	3937	74122
	Mythili	TF53777	01.09.13	31.03.15	3822	5906	80039
							7649527

The Asst Treasury Officer, Sri Rangam is instructed to recover the excess paid pension and DA from the pensioners under intimation to the pensioner and report the fact to audit.

PENSION ARREAR CALCULATION FOR THE PERIOD FROM 01.01.2007 TO 31.03.2015 OF THE PETITIONER

DUE: 13, 647/- **DRAWN: 23, 200/-**

PERIOD FROM	TO	DUE	PENSION DRAWN	DIFF	MONTH	TOTAL (i.e., EXCESS PAYMENT)
01.01.07	31.03.15	13647	23200	-9553	99	-945, 747
N	N/A	N/A	N/A	N/A	0	0
				TOTAL	99	-945, 747

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PERIOD FROM	TO	DA DA%	DUE	DRAWN	DIFF	MONTH	TOTAL (i.e., EXCESS PAYMENT)
01.01.07	30.06.07	6%	319	[illegible]	-573	6	-3434
01.07.07	31.12.07	9%	1228	[illegible]	-560	6	-3161
01.01.08	30.06.08	12%	1638	[illegible]	-1146	6	-4576
01.07.08	31.12.08	16%	2184	[illegible]	-1525	6	-9154
01.01.09	30.06.09	22%	3002	[illegible]	-2102	6	-12612
01.07.09	31.12.09	27%	3685	[illegible]	-2579	6	-15474
01.01.10	30.06.10	35%	4776	[illegible]	-3344	6	-20064
01.07.10	31.12.10	45%	6141	[illegible]	-4299	6	-25794
01.01.11	30.06.11	51%	6960	[illegible]	-4872	6	-29232
01.07.11	31.12.11	58%	7915	[illegible]	-5541	6	-33246
01.01.12	30.06.12	65%	8871	[illegible]	-6209	6	-37254
01.07.12	31.12.12	72%	9826	[illegible]	-6879	6	-41268
01.01.13	30.06.13	80%	10918	[illegible]	-7642	6	-45852
01.07.13	31.12.13	90%	12282	[illegible]	-8598	6	-51588
01.01.14	30.06.14	100%	13647	[illegible]	-9553	6	-57318
01.07.14	31.12.14	107%	14602	[illegible]	-10222	6	-61332
01.01.15	31.03.15	113%	15241	[illegible]	-10795	6	-32385
					TOTAL	99	-485,061

ABSTRACT

PENSION	-945, 747/-
DA	-488, 061/-
TOTAL	-1, 433, 808/-

ADDITIONAL PENSION ARREAR CALCULATION(i.e., additional benefits of super senior citizen pensioners 80 years and above) FOR THE PERIOD FROM 01.01.2011 TO 31.03.2015 OF THE PETITIONER

DRAWN: 4, 640/-

DUE: 2, 729/-

PERIOD FROM	TO	DUE	PENSION DRAWN	DIFF	MONTH	TOTAL (i.e., EXCESS PAYMENT)
01.01.11	31.03.15	2729	4640	-1911	51	-97, 461
N	N/A	N/A	N/A	N/A	0	0
				TOTAL	51	-97, 461

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PERIOD FROM	TO	DA%	DA DUE	DRAWN	DIFF	MONTH	TOTAL (i.e., EXCESS PAYMENT)
01.01.11	30.06.11	51%	1392	2366	-974	6	-5844
01.07.11	31.12.11	58%	1583	2691	-1108	6	-6648
01.01.12	30.06.12	65%	1774	3016	-1242	6	-7452
01.07.12	31.12.12	72%	1965	3341	-1376	6	-8256
01.01.13	30.06.13	80%	2183	3712	-1529	6	-9174
01.07.13	31.12.13	90%	2456	4176	-1720	6	-10320
01.01.14	30.06.14	100%	2729	4640	-1911	6	-11466
01.07.14	31.12.14	107%	2920	4965	-2045	6	-12270
01.01.15	31.03.15	113%	3084	5243	-2159	6	-6477
					TOTAL	51	-77907

ABSTRACT

PENSION	-97, 461/-
DA	-77, 907/-
TOTAL	-175, 368/-

Hence, the 1st respondent herein instructed the 3rd respondent herein to recover the excess amount paid to the writ petitioner. Before issuing the recovery order proper notice has been issued to the petitioner vide Ltr.Rc.No.758/A/2019 dated: 17.10.2019 of the 3rd respondent herein. Hence, the impugned order is well sustainable either in law or on facts.

6. With regard to the averment made by the petitioner on the grounds (a, b, c, d & e) of the affidavit, it is submitted that the petitioner herein has been sanctioned and paid excess amount for which he is not entitled for. The petitioner herein is a well-qualified teacher and in the event of granting an excess amount to him for which he is not legally entitled he ought to have report the fact to the authority concerned for correcting the error but the writ petitioner has not done so. Hence, proper and sufficient notice to the petitioner is not given by the respondent before issuing the recovery order is not a valid ground to the petitioner. Therefore, the impugned order is well sustainable either in law or on

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4.The order impugned dated 17.10.2019 is the notice referred in the counter affidavit filed by the first respondent. The order impugned clearly states that Thiru.Vanamamalai is requested to appear before the Additional Sub Treasury Officer, Sub Treasury, Srirangam, within 15 days from the date of receipt of this letter and if not possible to appear, please accept the recovery. It is the statement made in the impugned order. Therefore, the petitioner has been given with an opportunity. However, the petitioner instead of availing the opportunity provided by the respondents, has filed the present Writ Petition even at the initial stage. Thus, the Writ Petition is not only premature, but the petitioner has failed to avail the opportunity provided through the impugned order.

5.The learned Additional Government Pleader appearing for the respondents states that pursuant to the notice, the petitioner has submitted representation and based on the representation, audit notes copies were served on the writ petitioner. While so, the respondents ought to have passed the final order. In the present case, the respondents have not passed any final order.

6.This being the factum, the petitioner is at liberty to submit additional explanations / objections, if any, within a period of two (2) weeks from the date of receipt of a copy of this order. In the event of receiving any such objections / explanations, the respondents are directed to consider the same and pass final orders, on merits and in accordance with law, within a period of eight (8) weeks thereafter.

7.With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary / Commissioner of
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3.The Additional Sub Treasury Officer,
Sub Treasury, Srirangam, Trichy District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-6099[F] dated 15/02/2022)

+1 CC to M/s.SPL GP (SR-6228[F] dated 15/02/2022)

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