



W.P.No.4529 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4529 of 2016
and
W.M.P.No.3868 of 2016

S.Krishnamurthy

...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by the Secretary to Government,
Finance (Pension) Department,
Fort St. George, Chennai - 600 009.

2.The Principal Accountant General,
(Accounts and Entitlements) Tamil Nadu,
361, Anna Salai, Chennai - 600 018.

3.The Revenue Divisional Officer,
Cheyyar, Thiruvannamalai District.

4.The Treasury Officer,
Thiruvannamalai, Thiruvannamalai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in



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No.PO1/2/10113978/PPO dated 14.01.2016 and quash the same and direct the respondents to restore the pension and other retirement benefits as existed prior to the issue of the impugned order and grant all consequential benefits.

For Petitioner : Mr.P.Mohanraj

For R1, R3 & R4 : Mr.M.Shahjahan,
Special Government Pleader

For R2 : Mr.V.Vijayashankar

ORDER

Heard Mr.P.Mohanraj, learned counsel appearing for the petitioner, Mr.M.Shahjahan, learned Special Government Pleader for the respondents 1, 3 & 4 and Mr.V.Vijayashankar, learned counsel for the second respondent.

2. The petitioner herein retired from his service on 30.06.2010, while serving as an Assistant in the Revenue Divisional Office, Cheyyar. Prior to that, he had served as Karnam in Thiruvannamalai District from 22.10.1972 to 14.11.1980. After the post of Karnam was abolished, he was appointed as a Village Administrative Officer on 11.08.1982. After 6 years from the date of his retirement, the second respondent had passed the impugned order dated



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14.01.2016, revising the petitioner's monthly pension from Rs.8,670/- to Rs.8,092/- and recommended for recovering all the excess payments made.

Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that as per the decision of the Hon'ble Full Bench of this Court in the case of ***Government of Tamil Nadu, Public Works Department Vs. R.Kaliyamoorthy*** reported in ***2019 (6) CTC 705***, 50% of the services rendered by a Government servant in a non-provincialised service requires to be counted, for the purpose of conferment of pensionary benefits. However, contrary to the decision of the Hon'ble Full Bench of this Court, the present impugned order has been passed, revising the petitioner's monthly pension, by ignoring the past services of the petitioner as a Village Karnam.

4. It is needless to point out that for identically placed Government servants, 50% of the past services of Village Karnam have already been counted by the Government in various cases and pensionary benefits have already been awarded to them.



5. A perusal of the impugned order reveals that no show cause notice was issued to the petitioner prior to such revision and the contemplated recovery. Had an opportunity been given to the petitioner, these aspects of counting 50% of the past services of the petitioner could have been brought to the notice of the second respondent herein. Thus, the unilateral revision of pension and the consequential recovery is in violation of the principles of natural justice and on this ground, the impugned order cannot be sustained.

6. This apart, the Hon'ble Supreme Court, in the case of ***State of Punjab Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, has categorically held that recovery from a pensioner for wrong payments made, owing to the mistake of the department for a period exceeding 5 years, is impermissible in law. The relevant portion of the order reads as follows:-

"18. 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 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."

7. Since the petitioner herein is a retired employee and the recovery from the pension of a retired employee is impermissible in law, in view of the



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ratio laid down in *White Washer's case (supra)*, the present impugned order cannot be sustained.

8. In the light of the above findings, the impugned order passed by the second respondent dated 14.01.2016 is quashed. Consequently, there shall be a direction to the respondents herein to forthwith pass appropriate orders, restoring the original pension that was received by the petitioner prior to the impugned order dated 14.01.2016 and thereby disburse the arrears of pension that may have been recovered, if any, within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.01.2023

Index:Yes
Internet:Yes
Speaking order
hvk



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To
WEB COPY

- 1.The Secretary to Government,
Government of Tamil Nadu,
Finance (Pension) Department,
Fort St. George, Chennai - 600 009.
- 2.The Principal Accountant General,
(Accounts and Entitlements) Tamil Nadu,
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M.S.RAMESH,J.

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