IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.1162 of 2022 & W.M.P. No.1227 of 2022

S. Narayanasamy ... Petitioner

v

1 The Regional Registrar
High Court of Madras
High Court
Chennai 600 104

2 The Director
Treasuries & Accounts Department II Floor
Combined Finance Department Office Complex
Nandanam
Chennai 600 035

3 The Regional Director of Treasuries & Accounts Department
II Floor
Combined Finance Department Office Complex
Nandanam
Chennai 600 035

4 The Pension Pay Officer
Pension Payment Office
Nandanam
Chennai 600 035

5 The Concurrent Audit Officer
Pension Payment Officer
Chennai 600 035

6 The Accountant General (A & E)
No.361 Anna Salai
Chennai 18 Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records on the file of the fourth respondent with regard to the impugned order passed in Ref.Na.Ka.No.214039/2018/H2 dated 03.12.2018 and in Ref.Na.Ka.No.16122/2021/H2 dated 29.09.2021 and quash the same and to consequently direct the respondents to allow the petitioner to avail all pensions.

For petitioner	Mr. V.S. Jagadeesan
For RR 2 to 5	Mrs. V. Yamuna Devi Special Government Pleader
For RR 1 & 6	Mr. V. Vijay Shankar

ORDER

This writ petition has been filed challenging the communication dated 03.12.2018 of the fourth respondent, in and by which, the petitioner has been required to return the excess pension of Rs.1,34,640/- received by him in a single instalment, and also the letter dated 29.09.2021 of the fourth respondent, wherein, it has been stated that the excess commutation amount of Rs.1,99,260/- which ought to have been recovered @ Rs.1,320/- per month for 15 years from the date of disbursement, was not recovered and hence, it has been recovered from his pension and not from his salary.

2 The petitioner joined the services of the Tamil Nadu Administrative Tribunal as Assistant and he was subsequently promoted as Section Officer. Pursuant to the abolition of the said Tribunal, the petitioner was appointed as CO/SO/AE in this High Court and he attained the age of superannuation on 31.01.2007. He was granted all the terminal benefits, including commutation of pension.

3 While so, according to the petitioner, all of a sudden, the first impugned order dated 03.12.2018 and the second impugned order dated 29.09.2021, as stated in the opening paragraph, came to be passed and hence, this writ petition.

4 According to the petitioner, the impugned orders dated 03.12.2018 and 29.09.2021 are bald inasmuch as they do not contain the details as to how the excess payment was made. Further, according to him, he has not given any incorrect information nor made any misrepresentation to the authorities and if there is any mistake in determining the amount, the officers will have to be taken to task and after a decade, recovery cannot be made and the act of the respondents in recovering the entire amount is illegal.

5 The fourth respondent has filed a counter affidavit dated 25.02.2022, wherein, at paragraph no.6, it has been stated that by the first impugned order dated 03.12.2018 and the second impugned order dated 29.09.2021, the petitioner was informed that he had drawn pension in excess to which he is actually entitled to as per the relevant provisions for the period from June 2010 to November 2017 and that the excess amount has been recovered from the monthly pension for the period from December 2018 to July 2020.

6 In the said counter affidavit, details about the excess payment have also been given by referring to the judgment of the Supreme Court in **State of Punjab v Rafiq Masih**[1] (White Washer case) wherein, it has been held that when excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same; conversely, if the payment had been made for a long duration of time, it would be iniquitous to make the recovery. On the strength of the said judgment, the fourth respondent has contended that the excess amount that was paid to the petitioner from June 2010 to November 2017 was recovered and there is no illegality in the said act of the respondents.

1 (2015) 4 SCC 334

7 When the respondents are able to file a detailed counter affidavit narrating the break up details of the excess amount paid, it is beyond the ken of this Court as to what prevented them from stating the same in the impugned order. Be it noted, a mere averment in the impugned orders that excess amount has been paid and the same is sought to be recovered cannot be correct. It is indeed sorry that the impugned order has not been properly worded.

8 In this context, it is apropos to refer to the sapient passage from the judgment of the Supreme Court in **Mohinder Singh Gill v Chief Election Commissioner**[2] which reads thus:

> "8 The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out....." (emphasis supplied)

9 Further, it is pertinent to point out that the Government of Tamil Nadu has also issued G.O.Ms.No.286, Finance (Pension) Department dated 28.08.2018 pursuant to the judgment of the Supreme Court in **Rafiq Masih** (*supra*) and the opening paragraph of the said Government Order is worth extracting:

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2 (1978) 1 SCC 405

> "The Hon'ble Supreme Court in the case of State of Punjab & Others etc vs. Rafiq Masih (White Washer) etc. in CA No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitle due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information/misrepresentation/fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments....."

In the aforesaid Government Order, at paragraphs 9 and 10, there is a clear direction as to how recovery should be done in the light of the judgment of the Supreme Court in **Rafiq Masih** (*supra*) and that delay in processing of fixation of pay/pension/family pension fixation with due approvals shall be avoided so as to avoid hardship to the employees/pensioners/family pensioners concerned.

10 In the light of the judgment of the Supreme Court and the aforesaid Government Order, we hope and trust that at least in future, while passing recovery orders, necessary details are stated therein enabling the employees/pensioners/family pensioners to defend themselves and know where they stand actually and the reasons to be so assigned in recovery orders are not supplemented in affidavits filed before the Court, which practice is deprecatory. In the case on hand, since recovery has already been made, we are of the view that

no further adjudication is required to be made in this case and accordingly, this writ petition stands closed. Connected W.M.P. stands closed.

While parting, we hasten to add that though this is a fit case to impose costs on the Government, we refrain from doing so and rather, reserve it for other appropriate cases which amount shall be recovered from the erring officials.

(S.V.N., J.) (K.R.S., J.)
18.07.2023

cad

S. VAIDYANATHAN, J.
and
K. RAJASEKAR, J.
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To

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