IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.10676 of 2017
and
W.M.P.No.11621 of 2017

K.Kandasamy .. Petitioner

vs

1.The Tahsildar
Taluk Office,
Kunnam – 621 708
Perambalur District.

2.The Sub Treasury Officer,
Kunnam, Perambalur District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records made in the impugned order of the second respondent in dated 13.01.2017 in a proceeding Na.Ka.No.84/2017/A and QUASH; consequently direct the respondents to refund the recovered pension as excess payment to the petitioner.

For Petitioner : Mr.R.Sreedharan

For Respondents : Mr.S.Ravi Kumar
Special Government Pleader

ORDER

The learned counsel for the petitioner is absent. However, even on the earlier hearing date, there was no appearance.

2. Writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to an order of the second respondent, the Sub Treasury Officer, Kunnam in Perambalur District dated 13.01.2017 in proceedings Na.Ka.No.84/2017/A and quash the same and direct the respondents to refund the recovered pension as excess pension to the petitioner.

3. In the affidavit filed in support of the writ petition, it had been stated that the petitioner had retired as Village Administrative Officer on 31.01.2004. He was drawing pension from the second respondent office. He had been initially appointed as Village Administrative Officer on 12.03.1984 at Vankudi Village, Udayarpalayam, Perambalur District. It had been stated that the excess payment of Rs.89,129/- had been made to the petitioner and an order of recovery dated 13.01.2017 vide proceedings in Na.Ka.No.84/2017/A in 19 equal instalments had been isued. Questioning that particular order, the present writ petition has been filed.

4. In the counter affidavit filed by the second respondent, it had been stated that the pay fixing authority had failed to ensure

the fixation of the pay in accordance with the directions of the Government and that the pension amount fixed for the petitioner was higher than the first level of the promoted post of Revenue Assistant. It had been stated that the petitioner had received amount of Rs.4,500/- as ineligible pension and therefore, the excess amount had to be recovered from the petitioner in instalments. It had also been stated that notice was served to the petitioner and an explanation was also given and only thereafter, the respondents had passed the order dated 13.01.2017. In view of these facts, it is stated that the writ petition should be dismissed.

5. Learned Special Government Pleader also produced as documents, the fact that the audit objection was made in the year 2016 itself. It had been stated that the audit objection was for a total period of three years and eight months, wherein the petitioner had overdrawn pension. This Court had granted interim stay at the time of admission and the respondents have therefore filed W.M.P.No.37981 of 2017 to vacate the stay.

6. It had been contended that after the sixth central pay commission, the Government of Tamil Nadu, had constituted a commission to examine the implementation of the recommendation

of sixth pay central commission. Accordingly, G.O.(Ms).No.235 Finance (Pay Cell) Department dated 01.06.2009 had been passed. The petitioner retired from service on attaining the age of superannuation on 31.01.2004 as Village Administrative Officer. With respect to G.O.(Ms).No.235, the selection grade for the post of Village Administrative Officer is Rs.9300 – 34800 + GP 4200. The ordinary grade is Rs.5200-20200 + GP 2400. The next category feeder post of Revenue Inspector is Rs.5200 – 20200 + GP 2800.

7. It had however been further stated that the petitioner had been receiving the Selection Grade pay, which was more than the promoted post of Revenue Assistant. Therefore, it is contended that the petitioner had been receiving ineligible pension. In view of these facts, the only point arises for consideration is recovery of excess pension. In the case of *State of Punjab & Others Vs. Rafiq Masih (White Washer) etc., reported in (2005) 4 SCC 334*, the Hon'ble Supreme Court held 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."

8. The aforesaid decision squarely applies to the facts of the case insofar as recovery is concerned. It is seen that in the instant case, the notice had been issued to the petitioner herein and explanation was also sought and recovery is only proper and it

cannot be termed as iniquitous. Further, the recovery was directed to be recovered in 19 monthly instalments so that there would not be any financial burden on the petitioner herein.

9. In view of these facts, the writ petition stands dismissed. No costs. Connected miscellaneous petition is closed.

10. W.M.P.No.37981 of 2017 has been filed to vacate the the interim stay granted in W.M.P.No.11621 of 2017, stands allowed, consequently W.M.P.No.11621 stands dismissed.

22.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

1.The Tahsildar
Taluk Office,
Kunnam – 621 708
Perambalur District.

2.The Sub Treasury Officer,
Kunnam, Perambalur District.

C.V.KARTHIKEYAN,J.

ssm

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