BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.1297 of 2022
and
W.M.P(MD)No.1137 of 2022

P.Mohanadoss ... Petitioner

Vs.

1.The Accountant General (A & E),
361, Anna Salai,
Teynampet,
Chennai – 600 018.

2.The Treasury Officer,
District Treasury,
Sivagangai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent ie., the Treasury Officer, District Treasury, Sivagangai, not to effect any recovery in the pension of the petitioner and to refund the recovery already effected from June, 2021 to December, 2021.

For Petitioner	: Mr.S.Visvalingam
For R – 1	: Mr.P.Gunasekaran
For R – 2	: Mr.P.Thambidurai Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Mandamus, directing the second respondent ie., the Treasury Officer, District Treasury, Sivagangai, not to effect any recovery in the pension of the petitioner and to refund the recovery already effected from June, 2021 to December, 2021.

2.The petitioner was serving as Superintendent in the regulated market at Karaikudi. Thereafter, he was allowed to retire on 31.03.2012 on attaining the age of superannuation. The petitioner filed a Writ Petition in W.P(MD)No.4157 of 2013 on 14.03.2013 seeking to grant notional promotion to him in the cadre of Supervisor and Superintendent on par with his junior and to refix his pension and to pay the pensionary arrears within the stipulated time. The said Writ Petition was allowed on 19.04.2013, wherein the respondents especially, the Secretary to Government, Agriculture Department, Chennai and the Director of Agricultural Marketing and Agri Business, Chennai along with the Secretary, Ramanathapuram Marketing Committee, Virudhunagar, were directed to promote the petitioner notionally as Supervisor and Superintendent from the date on which his immediate junior was promoted as Supervisor and Superintendent and to refix the pension and arrears of pensions within a period of 12 weeks. Against which, the Government preferred a Writ Appeal in W.A(MD)No.970 of 2014, which was dismissed on 25.08.2014. The review petition filed by the Secretary of the Market Committee, Ramanathapuram at Virudhunagar was also closed recording the fact that the Commissioner of Agricultural Marketing and Agri Business, Chennai, complied with the orders passed by the Writ Court, dated 18.02.2020.

3.In furtherance to the same, the Secretary, Virudhunagar Market Committee, Virudhunagar sent revised pension proposals to the Accountant General, Chennai on 28.11.2020. The Accountant General, Chennai, also sanctioned the revised pension as per the proposals sent by the Secretary, Virudhunagar Market Committee, Virudhunagar. Despite the orders of this Court confirmed in Writ Appeal and Revision Petition and sanction of revised pension by the Accountant General, the Treasury Officer, District Treasury, Sivagangai, effected recovery of Rs.5,000/- from the petitioner's pension with effect from June, 2021, without any notice and recovery proceedings. Shocked by the conduct of the Accountant General, Chennai, the petitioner contacted the

Treasury Officer, District Treasury, Sivagangai, for which, no positive answer was given. To the culmination of all, the Treasury Officer, District Treasury, Sivagangai compelled the petitioner to sign in an assurance letter agreeing to pay the excess payment of Rs.1,37,753/- at the rate of Rs.5,000/- per month. However, the petitioner did not sign the said agreement letter sent by the Treasury Officer, vide covering letter, dated 01.07.2021. Since the said agreement letter was not signed, there is no impugned order for challenge. However, the challenge is only with respect to the recovery made from the pension of the petitioner for the month of June, 2021 to December, 2021 at the rate of Rs.5,000/- per month without issuance of any notice for the alleged excess payment made from 01.04.2012 ie., for a period of 9 years. Hence, this Writ Petition came to be filed.

4.Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner, Mr.P.Gunasekaran, learned counsel appearing for the first respondent and Mr.P.Thambidurai, learned Government Pleader appearing for the second respondent and perused the materials available on record.

5.It is already well settled by the Honourable Supreme Court of India in the case of ***State of Punjab and others*** reported in ***(2015) 4 SCC 344 (White Washers case)***, wherein several cases have been categorically discussed regarding recovery and finally decided against such recovery. The relevant portion of which is extracted as follows:-

> *"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:*
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> *(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."

6.Since the petitioner will fall under the category of recovery from the retired employees, to be more specific it is a case of recovery from a retired employee after a period of 9 years, this Court is inclined to direct the second respondent ie., the Treasury Officer, District Treasury, Sivagangai, not to effect any recovery in the pension of the petitioner. However, the petitioner is given liberty to submit a fresh representation seeking to refix the pension with effect from June 2021 to December 2021 and on receipt of the same, the respondents are directed to consider the same.

7.With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.07.2023

NCC : Yes/No
Index : Yes
Internet : Yes
ps

To

1.The Accountant General (A & E),
361, Anna Salai,
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Chennai – 600 018.

2.The Treasury Officer,
District Treasury,
Sivagangai.

L.VICTORIA GOWRI, J.

ps

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