BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.08.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.9584 of 2022
and
W.M.P(MD)Nos.6887, 12031 of 2022 & 12271 of 2023

P.A.Shanmuganandham ... Petitioner

Vs.

1.The Commissioner of Treasuries and Accounts,
Commissionerate of Treasuries and Accounts,
Integrated Complex for Finance Department,
3rd Floor, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai – 600 035.

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent ie., the Treasury Officer, District Treasury, Madurai in proceedings Na.Ka.No.148/2022/E1 dated 27.04.2022 and quash the same and consequently direct the second respondent not to effect any recovery on the ground of wrong fixation and payment made from 22.07.2013 to 30.09.2017.

For Petitioner : Mr.S.Viswalingam

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.D.Neduncheliyan
Government Advocate

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the second respondent ie., the Treasury Officer, District Treasury, Madurai, dated 27.04.2022 and consequently direct the second respondent not to effect any recovery on the ground of wrong fixation and payment made from 22.07.2013 to 30.09.2017.

2.Heard Mr.S.Viswalingam, learned counsel appearing for the petitioner and Mr.R.Baskaran, learned Additional Advocate General appearing for the respondents and perused the materials available on record.

3.The petitioner lastly served as a Additional Block Development Officer in the Panchayat Union at Devakottai. On attaining the age of superannuation, he was allowed to retire peacefully on 31.03.1996. The second respondent intimated vide his letter, dated 17.08.2015 that it has been decided to recover a sum of Rs.1,35,019/- from the petitioner's pension on the ground that the pension already fixed has been objected to in the audit. It was further directed in the said letter to remit the entire sum of Rs.1,35,019/- in one instalment. On receipt of the said letter, the petitioner sent a reply on 22.08.2015 elaborating that though the petitioner has no objection for refixation of pension, if, in case of wrong fixation, the recovery of such a huge amount cannot be effected as per the dictum of the Hon'ble Apex Court. On receiving the said reply, no recovery has been effected so far. However, suddenly on 27.04.2022, the second respondent once again sent a letter to the petitioner for effecting recovery for a sum of Rs.1,51,501/- for the period from 23.07.2013 to 31.10.2017 ie., for the wrong fixation of pension and payment made from 22.07.2013 to 30.09.2017. The alleged wrong fixation relates to the years 2013 to 2017. The petitioner retired as early as on 31.03.1996. After a period of 26 years of retirement alleging excess fixation from 2013 to 2017 amounting to Rs.1,51,501/-, the same has been ordered to be recovered. While so, the pension has also been refixed for the period from 2013 to 2017. Challenging the said communication, dated 27.04.2022, this Writ Petition came to be filed.

4.The second respondent has filed a counter-affidavit along with a vacate stay petition. The learned Additional Advocate General appearing for the respondents vehemently contended that in this case the wrongful payment was made from 01.03.2011 as it has been detected by the special audit conducted in the year 2015 ie., within a period of four years, the said mistake has been detected by the respondents. The petitioner retired from service in the year 1996 and the mistake occurred only in the revision of his pension in the year 2011 ie., after 13 years of his retirement. It is not the case that the mistake committed was during his employment and recovery ordered after his retirement. It is the case where the mistake as well as an order of recovery both happened only after his retirement and therefore such recovery cannot be more unfair or more wrongful or more improper or more unwarranted.

5.This Court has granted an interim stay by order dated 11.05.2022 staying the operation of the impugned recovery order dated 27.04.2022 till the disposal of the Writ Petition.

6.Relying upon the order passed by the Hon'ble Supreme Court in the case of ***Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others*** reported in ***2012 (8) SCC 417***, the learned Additional Advocate General insisted that the respondents are concerned with the excess payment of public money which is often described as “taxpayers money” which belong neither to the officers who have effected overpayment nor to the recipients. Situations may arise where both the payer and payee are at fault and in that case, the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law.

7.Even in this case, while revision of his pension during the year 2011, the mistake in calculating the revised pension has occurred and the same has been detucted by the special audit conducted in the year 2015. As such, payments on the basis of wrong fixation on the revised pension were effected by the respondents without any authority of law and the payments have been received by the petitioner without any authority of law. No doubt any amount paid/received without the authority of law can always be recovered barring few exceptions to extreme hardship, but not as a matter of right in such a situation law implies an obligation on the recipients/petitioner to repay the money otherwise it would amount to unjust enrichment. On such ground, the learned Additional Advocate General pressed for dismissal of the Writ Petition.

8.The Hon'ble Division Bench of this Court in ***W.A(MD)No. 834 of 2021, dated 09.04.2021 [The Commissioner of Treasuries and Accounts and others Vs. K.Panchavarnam]*** has dealt with a similar case, wherein favourable orders passed by the learned Single Judge were upheld and the relevant portion of which is extracted as follows:-

> *"3.The said writ petition was filed by the respondent herein who was the Assistant Educational Officer, retired on superannuation on 30.09.1992, challenging the order of recovery from his pension on the ground that excess pension was paid with effect from*

01.10.2017. The learned Writ Court allowed the writ petition by applying the law laid down by the Hon'ble Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334, which was followed in W.P.(MD)Nos. 15086 to 15090 of 2016 dated 20.06.2019."

9.This Court in ***W.P(MD)No.19996 of 2015, dated 14.06.2019 [Ramachandran Vs. The Director of Treasuries and others]*** dealt with a similar case and has passed favourable orders to the petitioner thereat and the relevant portion of which is extracted as follows:-

"3. This Court is of the considered opinion that even in case of any erroneous payment, the same cannot be recovered, after a lapse of many years, that too without issuing any show-cause notice or opportunity to the employee concerned. This apart, there was no misrepresentation on the part of the writ petitioner while fixing the scale of pay by the respondent / Establishment. The respondents are empowered to correct the scale of pay, if any mistake occurred. However, recovery of the excess payment already made cannot be recovered, in view of the legal principles settled by the Apex Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others, reported in (2015) 4 SCC 334. The relevant paragraph is extracted hereunder:

"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 hereinabove, we may, as a ready reference summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

10.Even in the case in hand, no doubt the petitioner was allowed to retire on attaining the age of superannuation as early as on 30.06.1996. Though it is claimed by the respondents that the mistake occurred only in the year 2011 during the revision of the petitioner's pension on 01.03.2011 and the wrongful payment on the basis of the wrongful revision of pension was detected within a period of four years in 2015 by a special audit and hence, the mistake had occurred within a period of 13 years after his retirement and not after 26 years of retirement as claimed by the petitioner and the delay of 13 years could not be considered as more unfair. However, be it 13 years or 26 years, the delay could be calculated as more than one decade and the Hon'ble Supreme Court in the guidelines issued in the ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** reported in ***2015 (4) SCC 334*** has categorically mandated that recovery from retired employees would be impermissible. Hence, in line with the orders passed by the various Courts discussed supra, I am of the view that recovery at such a belated stage is unreasonable and arbitrary and hence, the impugned proceeding of the second respondent, dated 27.04.2022 is hereby quashed and consequently, the second respondent is directed not to effect any recovery on the ground of wrong fixation and payment made from 22.07.2013 to 30.09.2017.

11.Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

27.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1.The Commissioner of Treasuries and Accounts,
Commissionerate of Treasuries and Accounts,
Integrated Complex for Finance Department,
3rd Floor, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai – 600 035.

2.The Treasury Officer,
District Treasury,
Madurai.

L.VICTORIA GOWRI, J.

ps

W.P.(MD)No.9584 of 2022

27.09.2023