



W.P(MD)No.874 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.874 of 2017
and W.M.P. (MD) Nos.729 & 4969 of 2017

G. Ganesan

...Petitioner

Vs.

1. The Assistant Educational Officer,
Papanasam, Thanjavur District.

2. The Principal Accountant General (A &E),
Tamil Nadu Chennai – 18.

3. The Sub – Treasury Officer,
Sub – Treasury Office, Papanasam,
Thanjavur District.

....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to calling for the records of the 3rd respondent relating to order in காமுஅ 57/2016/அ1 dated 15.09.2016 to quash the same and to issue consequential directions to the respondents to continue to disburse to the petitioner monthly pension which he was drawing up to September 2016 without reduction of recovery.



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For Petitioner : Mr.M.Saravanakumar
For R1 & R3 : Mr.A.Kannan
Additional Government Advocate

ORDER

Challenging the order of recovery passed by the third respondent on 15.09.2016, this Writ Petition is filed.

2. The facts of the case are that the petitioner, who was appointed as the Secondary Grade Assistant and retired on attaining the age of superannuation on 30.06.1986. Thereafter, the respondent has sanctioned pension vide PPO No.A450112/EDN. All of a sudden, the third respondent has reduced the monthly pension and passed the order for recovering of the excess amount from the pension vide order dated 15.09.2016. As per the order impugned in this Writ Petition, a sum of Rs.7,20,906/- is sought to be recovered from the petitioner on the ground of excess payment is made to the petitioner while granting pension paid from 01.04.1999 to 31.08.2016 due to incorrect determination of pension.



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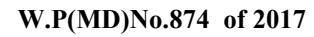
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3. A counter affidavit has been filed by the respondents.

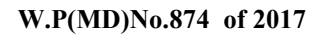
4. It is contended by the respondents that during the special inspection by the cell of the Office of the Commissioner of Treasuries and Accounts, Chennai, it was found that pension was paid to the petitioner excessively from 01.01.2007 and in this regard information was sent to the petitioner on 22.07.2016 towards excess payment and its recovery and effect given to reducing of pension.

5. It is further contended that as the pension is fixed excessively, the order passed by the third respondent dated 15.09.2016 for recovery of the excess payment is correct and sought to dismiss this Writ Petition.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 3 and perused the record.



“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,



(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 a extent, as would far outweigh the equitable balance of the employer's right to recover”

<https://www.mhc.tn.gov.in/judis>



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unsustainable under law and the same is liable to be set aside.

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9. Accordingly, applying the ratio laid down in the judgment of the Hon'ble Apex Court stated supra, this Writ Petition is allowed and the order impugned in this Writ Petition is set aside.

10. No costs.

11. Consequently, connected miscellaneous petitions are closed.

07.09.2023

Index : Yes / No
NCC : Yes / No
CM

To,

1. The Assistant Educational Officer,
Papanasam, Thanjavur District.

2. The Principal Accountant General (A &E),
Tamil Nadu Chennai – 18.

3. The Sub – Treasury Officer,
Sub – Treasury Office, Papanasam,
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BATTU DEVANAND, J.

CM

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