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W.P.No.614 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.614 of 2023
and W.M.P.Nos.557 & 558 of 2023

P.Thangaraj,
Retired Head Constable,
(Railway Police Wing), Tiruchirappalli Railway Unit,
Residing at Kamatchi Amman Koil Street,
Thiruvaduthurai (P.O.), Kuthalam Taluk,
Nagapattinam District.

.. Petitioner

Vs.

1.The Union of India Rep by
The General Manager,
Southern Railway, Park Town,
Chennai – 600 003.

2.The Senior Divisional Finance Manager,
Southern Railway, Tiruchirappalli Division,
Tiruchirappalli.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the
records of the order of the 2nd respondent dated 30.08.2022 and quash the
same with consequential direction, directing the respondents to restore
the original amount of pension receive by the petitioner, prior to Aug,

2022.

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



W.P.No.614 of 2023

For petitioner : Mr.V.Ravikumar
For Respondents : Mr.K.S.Jeyaganeshan
Senior Panel Counsel

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 30.08.2022 and for a consequential direction to the respondents to restore the pension of the petitioner which he was receiving prior to August, 2022.

2.Heard the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondents.

3.The case of the petitioner is that he was enlisted as a Grade-II Police Constable in the Railways and he joined services on 02.11.1970. He was thereafter upgraded to the post of Naik in the year 1984. The subsequent up-gradation to the post of Head Constable took place in the year 1997. The petitioner retired from service on attaining the age of superannuation on 30.04.2008. The pension amount payable to the petitioner was properly fixed and in the year 2016, the pension was revised considering the 7th Pay Commission recommendation.



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4.The grievance of the petitioner is that the 2nd respondent all of a sudden issued the impugned proceedings dated 30.08.2022, whereby the original pension of the petitioner at Rs.18,250/- was reduced to Rs.16,450/-. That apart, the 2nd respondent had also ordered for the recovery of the excess pension amount paid to the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

5.In the considered view of this Court, when the 2nd respondent proceeded to revise the pension of the petitioner, the minimum requirement is to issue notice to the petitioner and inform the petitioner about the revision of the pension and afford opportunity to the petitioner to give his reply in that regard. The 2nd respondent has straightaway issued the impugned order by revising the pension and reducing the same and such order has been passed behind the back of the petitioner. Hence, the order dated 30.08.2022 passed by the 2nd respondent is in violation of the principles of natural justice.

6.The next issue is as to whether the 2nd respondent could have ordered for the recovery of the pension amount which is alleged to have



been paid in excess. The law on this issue is no longer res integra and it is squarely covered by the judgment of the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***, reported in **2015 (4) SCC 334**. The Hon'ble Supreme Court made it very clear that where any amount has been paid in excess without there being any fault on the part of the recipient, the same cannot be recovered from the employee.

7. In the light of the above discussion, the impugned proceedings of the 2nd respondent dated 30.08.2022 is hereby quashed. If the 2nd respondent is entitled to reduce the pension, the petitioner shall be put on notice and the petitioner shall be afforded opportunity to give his reply on the proposed reduction of the pension amount. Thereafter, orders shall be passed by the 2nd respondent on its own merits and in accordance with law. Even if ultimately the pension amount is revised / reduced, the pension amount paid in excess cannot be recovered from the petitioner since, such excess payment was not due to the fault of the petitioner. Therefore, even in the event of passing a fresh order revising the pension, the 2nd respondent cannot order for recovery of the excess amount paid to the petitioner.



W.P.No.614 of 2023

WEB COPY

8.In the result, this Writ Petition stands allowed with the above directions. Consequently, the connected Miscellaneous Petitions are closed. No costs.

09.09.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

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