IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

WP.No.11304 of 2018
and WMP.Nos.13202 of 2018 & 20447 of 2018

Mr.S.Ramachandran ... Petitioner

Vs.

The Treasury Officer,
District Treasury,
Erode. ... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of writ of declaration to declare the recovery proceedings passed by the respondent dated 10.01.2018 Tho.Mu.24/2017/E2 as null and void and thereby direct the respondent not to reduce the pension of the petitioner drawing in PPO.No.A 937735 Edn and pass such other order.

For Petitioner : Mr.A.R.Nixon

For respondent : Mr.E.Vijay Anand, AGP.

ORDER

The case of the petitioner is that he is aged about 83 years at the time this writ petition and he is drawing pension through the respondent's treasury in PPO.No.A937735 Edn. The petitioner attained superannuation on 31.05.1993 as Elementary School Headmaster. The pension of the petitioner has been refixed on

31.05.2014 by the Assistant Elementary Education Officer, Kodumudi Municipality, Erode in the basic scale of pay of Rs.15,600 + 6600 G.P and revised to Rs.11,100 from the basic scale of Rs.10,650/- as per GO.MS.No.23 pay cell Finance Department dated 12.01.2011 from 01.01.2007 and the petitioner is receiving pension without any default. In the meanwhile, the respondent issued the impugned order dated 10.01.2018 stating that based on the objection of the Audit Party of Principle Secretary of Treasury during August 2017, the respondent wanted to recover a sum of Rs.87,109/- from the pension of the petitioner, as if the same was paid in excess and thereby directed the petitioner to deposit the same into the respondent account or to give consent for recovery from the pension within seven days on receipt of the letter, failing which the respondent will order for recovery from the pension. Thereafter, the petitioner has made a representation dated 22.01.2018 to the respondent. As there is no response from the respondent, the petitioner left with no other alternative option filed the present writ petition.

2. No counter affidavit has been filed on behalf of the respondent.

3. On the other hand, the learned Additional Government Pleader appearing for the respondent submits that based on the audit objection by the Principal Secretary of Treasury during August 2017, the respondent passed the order impugned dated 10.01.2018 for recovery of excess amount from the pension. Hence, the learned

counsel sought for dismissal of the writ petition.

4. It is an undisputed fact, the pension was refixed on 31.05.2014 by the Assistant Elementary Education Officer, Kodumudi Municipality, Erode in the basic scale of pay of Rs.15,600+6600 G.P. and revised to Rs.11,100/- from the basic scale of Rs.10,650/- as per GO.Ms.No.23 Pay Cell Finance Department dated 12.01.2011.

5. It is an admitted fact that the petitioner retired from service on 31.05.1993 on attaining superannuation and now he is depending on his pension.

6. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the materials available on record including the reliance placed by the learned counsel for the petitioner.

7. Admittedly, in the present case, before passing the impugned order, the respondent did not choose to issue show cause notice to the petitioner calling for his explanation. It is settled law that without issuing any notice to the aggrieved party, passing an order is in violation of the principles of natural justice. As such, in our considered view, the order impugned in this writ petition is passed in violation of the principles of natural justice.

8. In fact, on several occasions, identical issue came up for consideration

before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in ***Rafiq Masih (White Washer) (supra)***, this Court set aside the proceedings of recovery in ***W.P.No.6945 of 2022, dated 26.06.2023*** and in ***W.P.(MD) No.16106 of 2016, dated 20.07.202***3. The relevant portion of the judgment of the Hon'ble Apex Court in ***Rafiq Masih (White Washer) (supra)***, is extracted hereinunder:

> *"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 employers right to recover."

9. In the judgment cited supra, the Hon'ble Apex Court held that recovery from employees belonging to Class III and Class IV service or Group C and Group D service and recovery from retired employees or employees who are due to retire within one year of the order of recovery would be impermissible in law.

10. In the present case, the petitioner retired from service on 31.05.1993 and as such, the action of the respondent in issuing the impugned order on 10.01.2018 for recovery from the petitioner after 25 years of his retirement is impermissible under law, as such the impugned order is liable to be set aside.

11. On consideration of the facts and circumstances of the present case and in the light of the authorities cited supra, this Court has no hesitation to hold that the action of the first respondent in issuing the impugned order of recovery is illegal, arbitrary and unjust and in violation of the principles of natural justice and accordingly, the impugned order is liable to be set aside.

12. For the above reasons, this Writ petition is allowed with the following directions :-

(i) The impugned order dated 10.01.2018 Tho.Mu.24/2017/E2 is hereby set aside

(ii) The respondent is directed not to reduce the pension of the petitioner.

(iii)if any recovery is already made, the amount recovered shall be reimbursed to the petitioner forthwith.

13. Consequently, connected miscellaneous petitions are closed.

14. There shall be no order as to costs.

29.01.2024

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Index : Yes/No
Neutral Citation : Yes/No

To
The Treasury Officer,
District Treasury,
Erode.

BATTU DEVANAND, J.
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