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W.P.No.40794 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15/12/2023
Pronounced on	26 /6/2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.40794 of 2015
and M.P.No.1 of 2015

Munirathnam

... Petitioner

Vs

1. The District Collector,
Dharmapuri.

2. District Treasury Officer,
District Treasury,
Dharmapuri.

3. The Assistant Treasury Officer,
Sub-Treasury,
Dharmapuri.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus seeking direction forbearing the respondents particularly 3rd respondent from recovering Rs.5000/- from the pension amount of petitioner and also direct the 3rd respondent to reinstate the recovered amount of Rs.1,45,000/- which deducted from the petitioner pension on monthly basis.

For petitioner

...

Mr.G.Mohammed Aseef



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For respondents

...

Mr.S. Ravi Kumar
Special Government Pleader

O R D E R

This Writ Petition is filed to issue Writ of Mandamus directing the third respondent from forbearing from recovering Rs.5000/- per month from the pension amount of petitioner and further direct the third respondent to reinstate the recovered amount of Rs.1,45,000/- form pension.

2. The petitioner was an Ex.service man and after his retirement he started receiving his pension from the Assistant Treasury Officer, Sub-Treasury, Dharmapuri, from the year 1979. The third respondent has wrongly fixed pension of the petitioner from 01.01.2005 and continued to pay the paid pension until 31.05.2013 and in all paid a sum of Rs.2,45,000/- excess of what the petitioner was to be paid. Third respondent after realizing the mistake started recovering the said amount from the pension of the petitioner at the rate of Rs.5,000/- per month from 01.09.2013 and was continued to recover even as on the date of filing of the Writ Petition.

3. The petitioner has not misrepresented or has not committed any



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fraud in fixation of the pension. The third respondent on his own mistake has wrongly fixed pension and it is purely mistake on the part of the third respondent and petitioner has nothing to do with it. It is submitted by the learned counsel for the petitioner that since petitioner is no way connected with excess payment of pension by the third respondent and the same cannot be deducted from the pension of the petitioner and therefore sought for issuance of directions as prayed for.

4. The third respondent/ the Assistant Treasury Officer has filed counter affidavit stating that petitioner has retired from the Defence and originally his pension was fixed at Rs.82/- per month with effect from 01.04.1979 and the pension of the petitioner was revised from time to time. The petitioner was drawing an amount of Rs.3,555/- as monthly pension with effect from 01.01.2006 plus Dearness Allowance from time to time. It is further mentioned in the counter affidavit that the Principal Controller of Defence Accounts (Pension), has issued a circular No.397, dated 18.11.2008 and in para 11 of the said Circular, it is mentioned that additional pension will be given to the pensioners who attains the age of 80 years and above as on 01.08.2008. Though the petitioner has not completed 80 years mistakenly additional pension was granted to him and the additional pension was continued to be received by



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the petitioner. The petitioner was in all paid Rs.2,45,000/- as excess pension.

However, the third respondent has realized that there was excess payment of pension, thereby, proceedings were issued to recover excess pension paid in 48 installments of Rs.5,000/- per month with effect from June 2013 onwards. It is submitted by the learned counsel for the respondent that since petitioner is not at all responsible for excess pension, recovery of excess pension paid by the third respondent to the petitioner is not proper. Learned Special Government Pleader has submitted that at the time of taking the pension, the petitioner has given undertaking that in case of excess payment if any paid, he will repay the same, therefore prayed for dismissal of Writ Petition.

5. Heard both sides and perused the records.

6. The petitioner who is an Ex-Service man started drawing his pension from the year 1979. Originally the petitioner's pension was fixed at Rs.82/- per month and later it was being revised from to time and with effect from 01.01.2006 his pension was revised to Rs.3,555/-. The problem started when his pension was revised and increased on account of the mistake committed by the third respondent/ Assistant Treasury Officer, on erroneous conclusion, that the petitioner has crossed 80 years. The excess pension was



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paid to him every month, thereby an amount of Rs.2,45,000/- was paid in excess until the third respondent has realized the mistake. The third respondent has ordered to recovery of the excess amount paid in 48 installments of Rs.5,000/- each and accordingly, started deducting Rs.5,000/- every month from the pension. Aggrieved by the same the petitioner has approached this Court.

7. Admittedly, the petitioner has not involved in excess payment of pension by third respondent to the petitioner. He was not even informed by the third respondent by way of issuing proceedings that his pension was enhanced allegedly on attaining age of 80 years. Once third respondent has issued ordered to recover the excess pension in 48 installments at the rate of Rs.5,000/- per month, the third respondent was expected to issue the notice to the petitioner informing that excess amount was paid to him and that is being recovered by way of installments. Until he started getting less pension, he could not realize that the deductions were being made. Further, if excess amount is paid after the retirement of an employee who has no role in receiving of such excess payment towards retirement benefits or otherwise, the said amount cannot be recovered. Learned counsel for the petitioner has cited the following authorities of the Hon'ble Supreme Court



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i) In ***Babulal Jain vs. State of M.P and Others***, reported in (2007) 6

Supreme Court Cases 180, it is observed by Hon'ble Supreme Court as under:

“15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. Appellant has discharged higher responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law. He was at least entitled to some allowances. In re-fixing his pay, his claim to that effect has not been considered. He has since retired. A sum of Rs. 22,000/- has been recovered from him. Such recovery has been effected without issuing any show cause notice. His case on merit in this behalf had not been considered by the Government and even by the Tribunal.

16.The Tribunal did not assign any reason in support of its order. The correct legal position was not brought to the notice of the tribunal.

17.For the reasons aforementioned, this appeal is allowed in part and to the extent mentioned herein before.

18.We, therefore, while directing the respondents to refund the said sum of Rs. 22,000/- to the appellant herein, also direct that his retirement benefit shall be calculated as if he had reached the age of superannuation only as an Accountant on the re-fixed pay and not on the scale of pay of the Election Supervisor. We issue this direction in exercise of our jurisdiction under Article 142 of



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the Constitution of India...”

ii) In **Col.B.J.Akkara (Retd.) vs. Government of India and Others**, reported in (2006) 11 Supreme Court Cases 709, wherein it is observed by Hon'ble Supreme Court as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled [Vide Sahib Ram vs. State of Haryana [1995 Suppl.1 SCC 18], Shyam Babu Verma vs. Union of India [1994 (2) SCC 521], Union of India vs. M. Bhaskar [1996 (4) SCC 416], and V. Gangaram vs. Regional Joint Director [AIR 1997 SC 2776] :

a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.”



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8. Considering, the discussions made above, this Writ Petition is allowed directing the third respondent forbearing from recovering of Rs.5,000/- per month from the pension and further third respondent is directed to reimburse an amount of Rs.1,45,000/- which was recovered from the petitioner or any amount recovered thereafter from the petitioner, within 12 weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
jai

To

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Dharmapuri.
2. District Treasury Officer,
District Treasury,
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3. The Assistant Treasury Officer,
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Dr.D.NAGARJUN, J.

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Pre-delivery order made in



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