



Writ Petition No.21204 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>15.02.2024</i>
<i>Pronounced on</i>	<i>17.04.2024</i>

CORAM

THE HONOURABLE DR.JUSTICE BATTU DEVANAND

Writ Petition No.21204 of 2018

K.Nagarujunan

... Petitioner

Vs.

1. The Commissioner of Police,
City Police Office,
Coimbatore City,
Coimbatore-641 018.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the first respondent passed in C.P.O.No.1024/2018, Na.Ka.No.B3/026460/2018 DATED .06.2018 ordering recovery of Rs.1,64,193/- from DCRG amount as excess pay drawn and quash the same and consequently, direct the respondents herein to repay Rs.1,64,193/- with interest for the delay period of payment of the above amount.



Writ Petition No.21204 of 2018

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.L.S.M.Jasan Fizal, AGP for R1
Mr.V.Murali for R2

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the first respondent passed in C.P.O.No.1024/2018, Na.Ka.No.B3/026460/2018 DATED .06.2018 ordering recovery of Rs.1,64,193/- from DCRG amount as excess pay drawn and quash the same and consequently, direct the respondents herein to repay Rs.1,64,193/- with interest for the delay period of payment of the above amount.

2.According to the petitioner, he joined as Grade II Police Constable in the year 1985 and later he was promoted periodically as Grade I Police Constable in the year 1995 and as Head Constable in the year 2000 and as Special Sub Inspector of Police in the year 2011 and on 31.10.2017, he retired from service voluntarily.



Writ Petition No.21204 of 2018

3.The grievance of the petitioner is that without issuing any notice or affording an opportunity to the petitioner, the first respondent pursuant to the instructions of the second respondent, vide order dated 09.03.2018 re-fixed his pay as Special Sub Inspector of Police and regulated the same from 01.01.2006. Pursuant to the re-fixation of pay, the first respondent vide order dated .06.2018, ordered recovery of excess payment of Rs.1,64,193/- in one lump sum from the DCRG benefits payable to the petitioner and to be remitted to the Government account. Challenging these orders, the writ petitioner has constrained to file the present Writ Petition.

4.A counter affidavit has been filed on behalf of the 1st respondent, wherein, it is stated that consequent to the retirement of the petitioner, his pension proposal along with his service book were sent to the Accountant General, 2nd respondent herein, who in turn, on scrutiny of the same, has remarked that one increment of Rs.420/- granted on 01.01.2011 was not in order and directed that the pay of the petitioner required to be regulated from 01.01.2006. It is further stated that the petitioner had availed the following leave in a piecemeal manner, viz.,



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Writ Petition No.21204 of 2018

“i. 26 days Extraordinary Leave without pay and allowances (Medical) from 25.06.2017 to 20.07.2017.

ii. 4 days Earned Leave (Medical) from 22.08.2017 to 25.08.2017.

iii. 54 days Extraordinary Leave without pay and allowances (Medical) from 26.08.2017 to 18.10.2017.

iv. He reported for duty on 19.10.2017 for one day and again he went on leave from 20.10.2017 on Extraordinary Leave without pay and allowances (Medical) till 30.10.2017.

v. He reported on 31.10 2017 i.e, on Voluntary Retirement date.”

5. Therefore, the total excess payment due to unauthorised leave amounts to Rs.1,64,193/- and hence, vide order dated .08.2018, ordered recovery of excess payment made to the petitioner towards extraordinary leave availed by him. However, by oversight, a clerical mistake was made by incorporating 'pay fixation reference' instead of 'leave reference' in the proceedings. It is further stated that the recovery is due to over payment of pay and the same has been rightly ordered to be recovered, which requires no interference. With these averments, the 1st respondent sought for dismissal of the Writ Petition.



Writ Petition No.21204 of 2018

6. Heard the learned counsel for the petitioner and the learned Addl. Government Pleader for the respondent No.1 and the learned counsel for the 2nd respondent.

7. Assailing the impugned orders of the 1st respondent, Mr. Ravi Shanmugam, learned counsel appearing for the petitioner would contend that the impugned orders cannot be sustained and liable to set aside on the ground of principles of natural justice inasmuch as no prior notice or opportunity was given to the petitioner before passing the same. He would pointed out that recovery was ordered beyond 5 years and after 8 months from his retirement and that the petitioner had not misrepresented for granting of excess pay and the payment was made due to administrative fault and the petitioner is nothing to do with the same and therefore, ordering recovery of amount from DCRG payable to the petitioner is an arbitrary exercise of power. Hence, he prayed this Court to quash the impugned proceedings.

8. In support of his contentions, he relied upon a decision of the Hon'ble Supreme Court in ***“Shyam Babu Verma vs Union Of India”***



Writ Petition No.21204 of 2018

reported in 1994 (2) SCC 521 and submitted that order of recovery without notice or opportunity is liable to be quashed as in violation of principles of natural justice. He also relied upon a decision of the Hon'ble Supreme Court in “*State of Punjab & Others versus Rafix Masih (White Washer) & Others*” reported in 2015(4) SCC 334 and submitted that ordering recovery from the retired employees is impermissible in law where the payment has been mistakenly made by the employer and for a period in excess of five years.

9. On the other hand, Mr. L. S. M. Hasan Fizal, learned Addl. Government Pleader appearing for the 1st respondent, while reiterating the averments contained in the counter affidavit, would submit that recovery of payment was made since the petitioner has been paid excess towards extraordinary leave availed by him. He would submit that the disparities in pay fixation cases arise from time to time due to administrative reasons and payment of arrears or recoveries thereof is a routine part of administration. He pointed out that the petitioner had accepted and signed a declaration and consented that any recovery can be made from his pension or gratuity in the event of any such recovery arises in future. He relied upon



Writ Petition No.21204 of 2018

a decision of the Hon'ble Apex Court in “**Chandni Prasad Uniyal versus State of Uttarkhand**” reported in (2012) 8 SCC 417 and submitted that any amount paid/received without authority of law, can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implied an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. Therefore, the petitioner cannot enrich by payment of excess amount and accordingly, the 1st respondent has rightly ordered recovery of the same and there is no illegality or irregularity in order to interfere with the same. Hence, he sought for dismissal of the Writ Petition.

10.Having heard the learned counsel appearing on either side and on careful perusal of the material available on record and on bare reading of the order impugned in this Writ Petition, it is clear that the impugned order of recovery has been passed without issuing any notice to the petitioner. No opportunity was granted to the petitioner to putforth his case before passing the recovery order. The Apex Court and this Court, time and again, declared that passing any adverse order without affording an opportunity to the aggrieved persons, amounts to violation of the principles of natural justice.



Admittedly, in the present case, the first respondent passed the impugned order in violation of the principles of natural justice and on this score alone, it is liable to be set aside.

11. Besides this, as rightly pointed out by the learned counsel for the petitioner that in the case of "*State of Punjab & Others vs. Rafix Masih (White Washer) & Others*" cited supra, the Apex Court has postulated certain categories and observed that the recovery from the retired employees is impermissible. One of such categories is, recovery from the retired employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. The relevant portion of the said judgment 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 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 employer's right to recover."
(emphasis added)

12. In the present case, admittedly, the petitioner had already retired from service on 31.10.2017 and the impugned order of recovery was made in the month of June 2018 for the excess amount paid for about more than five years back. As such, as per the ratio laid down by the Apex Court



Writ Petition No.21204 of 2018

judgment cited supra, this Court is of the considered view that the impugned order of recovery is impermissible under law.

13. For the above stated reasons, this Writ Petition is allowed in part with the following directions.:

(i) The order of recovery passed by the first respondent in C.P.O.No.1024/2018, Na.Ka.No.B3/026460/2018 dated .06.2018 impugned in this Writ Petition, is hereby quashed.

(ii) The respondents are directed to repay the amount recovered from the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.

(iii) The first respondent is at liberty to re-fix the pay of the petitioner and to rectify the mistakes if any, after issuing notice to the petitioner, if so advised. No costs.

17.04.2024

Index : Yes/No
Speaking order: Yes/No
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Writ Petition No.21204 of 2018

To

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City Police Office,
Coimbatore City,
Coimbatore-641 018.

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

BATTU DEVANAND, J

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Writ Petition No.21204 of 2018



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Writ Petition No.21204 of 2018

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