IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.9548 of 2015 and
M.P.No.2 of 2015

Mrs.N.Valliammal .. Petitioner

Vs.

1. The Pension Pay Officer
   Pension Payment Office,
   DPI Compound,
   College Road, Chennai – 6.

2. The Assistant Accounts Officer
   Office of the Pension Payment Officer
   DPI Compound, College Road,
   Chennai – 6.

3. The Director of Treasuries and Accounts
   Nandanam, Chennai.

4. The Branch Manager
   State Bank of India,
   Velachery Branch,
   Chennai – 42. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for records of the 1st Respondent in its Na.Ka.205391/2015/E1 dated 18.03.2015 and quash the same.

For Petitioner : Mr.S.Mahesh

for Mr.V.Vijay Shankar and
N.Balamuralikrishnan

For R1 to R3 : Mr.Abishek Murthy
Government Advocate

For R4 : Mr.R.Kannan

ORDER

The present writ petition is filed challenging the proceedings dated 18.03.2015 whereby a sum of Rs.4,67,020/- has been found to be paid in excess of pension by mistake and consequently vide the impugned proceedings the respondent had directed the petitioner to repay the said sum.

2. The petitioner herein is the wife of Mr.Kirubakaran who served as Joint Secretary to Government, Public Department before superannuating from service on 30.04.2006. He was a sanctioned pensioner and was receiving pension until his demise on 05.06.2011. Thereafter, family pension was paid to the petitioner. Subsequently, without any prior notice an order dated 18.03.2015 was issued by the 1st Respondent to the petitioner informing that Rs.4,67,020/- has been paid in excess and the same should be refunded.

3. It is submitted by the learned counsel for the petitioner that the issue

stands covered by the judgment of the Hon'ble Supreme Court in the case of State of Punjab v. Rafiq Masih (White Washer), reported in (2015) 4 SCC 334 wherein it was held that excess payment unless vitiated by fraud is a question of misrepresentation and cannot be recovered. The relevant portion of the judgment is extracted hereunder:

> ***"6.*** *In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.*
>
> ***7.*** *Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.*
>
> **.....**
>
> ***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, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from the 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."*

4. The learned counsel for the Respondent also does not seriously object to the above position.

5. I find that the case of the petitioner would be covered by clause (2) to para 18 in the judgment of the Hon'ble Supreme Court in the case of *State of Punjab v. Rafiq Masih (White Washer)*.

6. In view thereof, the impugned order is set aside and the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is

closed.

19.06.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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