IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.24515 of 2021
and W.M.P.No.25828 of 2021

Mr.M.S.Natarajan,
S/o.Late. Sundaresa Iyer ... Petitioner

Vs.

1. The Ministry of Defence,
rep. by the Principal Secretary to the Government,
'B' Wing, Sena Bhavan,
New Delhi – 110 011.

2. The Defence Accounts Department,
Rep. by the Controller General of Defence Accounts,
Ministry of Defence,
Ulan Batar Road, Palam,
Delhi Cantt – 110 010.

3. The Indian Air Force,
Rep. by the Joint Director (Finance & System),
IAFBA, 2nd Floor, AFGIS Bhavan,
Subroto Park, New Delhi – 110 010.

4. The Principal Controller of Defence Accounts (Pensions),
Draupadi Ghat, Near Sadar Bazaar,
Prayagraj, Allahabad, Uttar Pradesh – 211 014.

5. The Assistant General Manager,
State Bank of India (CPPC),
Centralised Pension Processing Centre (4470),
No.112/4, Kaliamman Koil Street,
Virugambakkam, Chennai - 600 092. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to pay the pension as per the pension pay order without any deductions into the account of the petitioner with the 5th respondent as per the guidelines framed by the respondents 1 to 3 with reference to the Pension Payment Rules and in pursuance to the representation dated 31.08.2020.

For Petitioner	:	Mr.Venkatesh Mohanraj
For Respondents	:	Mr.G.Ilangovan Central Government Standing Counsel [R1 to R4] Mr.K.Chandrasekaran, Standing Counsel for SBI [R5]

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ORDER

This writ petition has been filed seeking for a writ of mandamus directing the respondents to pay the Pension as per the pension pay order without any deductions in the account of the petitioner with the 5th respondent as per the guidelines framed by respondents 1 to 3 with reference to the Pension Payment Rules and in pursuance to the representation dated 31.08.2020.

2. The petitioner , who is an Ex-Serviceman was sanctioned with the pension pay order in PPO No.S/37274/69. The petitioner's actual date

of birth is 23.12.1935, but he came to know that his date of birth has been wrongly entered as 12.05.1919. The petitioner has sent several requests to change his date of birth in view of the above discrepancy. However, on 26.12.2019, the fifth respondent started debiting a sum of Rs.15,000/- from the amount payable to the petitioner and the pension payable to the petitioner was reduced. On 17.01.2020, the petitioner received a communication purportedly dated 23.12.2019, in which, the fifth respondent had informed the fourth respondent that they are deducting the payment of Rs.15,000/- from the pension of the petitioner as there has been an overpayment of Rs.8,71,204/-. Later, the petitioner's date of birth was corrected and it has been reflected in the Pension Daftar, Descriptive Roll, etc. However, without the knowledge of the petitioner the recovery order has been made and hence, the petitioner has filed this writ petition challenging the same.

3. The learned counsel for the respondents 1 to 4 has submitted that the petitioner being an ex-serviceman has got jurisdiction only before the Arbitral Tribunal in respect of any of his grievance with respect to his service and hence, the writ petition is not maintainable.

4. It is further submitted that, if there is any mistake found out that there is an excess payment and it was found later, that has to be recovered by the respondents 3 and 4.

5. The learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Punjab and Ors. Vs.Rafiq Masih (Whiter Washer)*** reported in ***(2015) 4 SCC 334*** and submitted that the recovery cannot be made against the retired employee and that too after several years of his retirement. The Hon'ble Supreme Court in ***White Washer's*** case has held that the following types of recovery are impermissible:

> "*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:*
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> *(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 has 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 cover."

6. The petitioner is no doubt a retired employee and the recovery is sought to be made from the petitioner after several years of his retirement and hence, he would squarely fall under the purview of the ***White Washer's*** case.

7. Mr.G.Ilangovan, learned Central Government Standing counsel submitted that the above judgment will be applicable for the

Government employees and would not applicable to the armed service personnel.

8. Now the petitioner is not an armed personnel and he has retired from service and there has been no employer employee relationship between the petitioner and respondents 3 and 4. If a person is aggrieved by any order of the State, then he has got the fundamental right to challenge the same by way of filing a writ of mandamus. However, the case of ex-employee of any employer cannot be restricted from reviewing the order in respect of payment that has been made in excess due to their own mistake or due to the mistake in particulars furnished by the ex-employee. In the instant case, if the petitioner was disbursed with the excess payment by wrongly construing his date of birth that has to be rectified by the respondents 3 and 4. However, if the consequential pension payable to the petitioner is reduced due to the revised date of birth adopted in the service records, it is obligatory on the part of the respondents 3 and 4 to implement the same.

9. Insofar as the ***White Washer's*** case is concerned, it is in respect of recovery in respect of those amounts, which were paid in excess due to the mistake on the part of the employer or due to the

suppression of facts by the employee, hence, that will not preclude the respondents 3 and 4 to rectify the mistake, if any happened in the service records.

10. Since the petitioner has filed this writ petition seeking to restore his pension amount and the said relief revolves certain factual questions, this Court cannot dwell deep on facts deserve to be proved through a trial. However, the respondents 3 and 4 have got a duty to ascertain whether the date of birth of the petitioner is 23.12.1935 or 12.05.1919 on the basis of the records. Hence, the representation of the petitioner can be considered by the respondents 3 and 4 in the light of the above observations and pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

26.03.2024

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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To

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R.N.MANJULA, J.

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