IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No.22180 of 2017
and
W.M.P.Nos. 38006 of 2017 & 23208 of 2017

G. Panneerselvam ... Petitioner

Versus

1.The District Revenue Officer,
Namakkal, Namakkal District.

2.The Tahsildar,
Rasipuram,
Rasipuram Taluk and District.

3.The Sub-Collector,
Namakkal, Namakkal District.

4.The Principal Accountant-General (A & E),
Chennai – 600 018. ... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating the order in Na.Ka.No.5538/2017/A2 dated 26.07.2017 of the second respondent to quash the same.

For Petitioner : Mr. R. Apoorva
for Mr. M. Ravi
For Respondents : Mrs. C. Sangamithirai, for R1 to R3
Special Government Pleader
Mr. V. Murali, for R4

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Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 to 3 and the learned counsel for the fourth respondent and perused the materials available on record.

2. The case of the petitioner is that he is a retired Village Administrative Officer, Naraikinar Village, Rasipuram Taluk, Namakkal District. As per GO.Ms.No.148, Revenue (Ser.8(2) Dept dated 20.04.2011, the petitioner was granted minimum pension with effect from 01.08.2006 onwards as per PPO No.C206470/PCR/2009-10 dated 24.02.2017 authorised by the Principal Accountant General (A&E), Tamil Nadu Chennai – 18. Whileso, the second respondent in his order in Na.Ka.No.5538/2017A2 dated 26.07.2017 stating that the 1st respondent/District Revenue Officer, Namakkal in his letter Na.Ka.No.10135/2017/A4 dated 30.06.2017 has informed that minimum pension was paid from 01.08.2006 onwards, whereas as per GO.Ms.No.148, Revenue (Ser.8(2) Dept dated 20.04.2011, the petitioner was eligible for minimum pension from the date of GO.Ms.No.148 dated 20.04.2011. Hence, the excess pension paid to the petitioner for the period from 01.08.2006 to 19.04.2011 amounting to Rs.2,02,848/- is ordered for recovery from the petitioner. It is submitted that no calculation sheet is communicated as to how the aforesaid amount was calculated.

3. It is further submitted that consequent to GO.Ms.No.148 dated 20.04.2011, the third respondent/Sub Collector, Namakkal in his ROC.No.9516/2011 dated 19.12.2011 addressed the pension proposals to the Accountant General (A&E) Chennai -18 for sanction of minimum pension at Rs.1,275/- p.m. from 01.08.2006 and Rs.3,050/-p.m. from 01.01.2007 and the same was duly sanctioned.

4. The learned counsel for the petitioner submits that the impugned order dated 26.07.2017 issued by the second respondent for recovery of a huge sum towards released payment of excess payment to the petitioner has been issued without prior notice and without offering opportunity of being heard, as such it is liable to be set aside as it is in violation of principles of natural justice.

5. The learned counsel contends that the recovery against the petitioner is impermissible as he was Class-III employee and retired on 31.07.2006 and the alleged excess payment relates to period of five years prior to the date impugned order. As such, as per the law laid down by the Hon'ble Apex Court in ***State of Punjab V. Rafiq Mashiq*** reported in ***2015 (4) SCC 334***, the respondents are not entitled to issue impugned order.

6. The learned counsel also contends that the minimum pension was sanctioned as per the existing G.O. Dated 20.04.2011 and authorised by the Accountant General and the sanction of the minimum pension was not made on any misrepresentation by the petitioner. As such, the impugned order is unsustainable under law.

7. No counter affidavit has been filed on behalf of the respondents.

8. The learned Special Government Pleader appearing for the respondents submitted that the impugned order is issued as per the instruction of the District Revenue Officer, Namakkal in his letter Na.Ka.No.10135/2017/A4 dated 30.06.2017 and accordingly the excess pension paid to the petitioner for the period from 01.08.2006 to 19.04.2011 has to be recovered from the petitioner, as such there is no illegality or irregularity in passing the impugned order and sought for dismissal of the writ petition.

9. The Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, order dated 02.05.2022 of the Hon'ble Apex Court in ***C.A.No.7115 of 2010 [Thomas Daniel v. State of Kerala &***

Ors], order dated 26.07.2023 in ***W.P. (MD) No.17154 of 2016*** and order ***dated 08.08.2023 in W.P.(MD) No. 22395 of 2016*** of this Court.

10. 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.

11. 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.

12. Admittedly, in the present case, before passing the impugned order, the 2nd respondent did not choose to issue show cause notice to the petitioner calling for his explanation. As such, in our considered view, the order impugned in this writ petition is passed in violation of the principles of natural justice.

13. 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."*

14. The Hon'ble Apex Court in ***Thomas Daniel (supra)***, while considering identical issue, held as extracted hereinunder:

> *"(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.*
>
> *(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."*

15. This Court in **W.P.(MD) No.17154 of 2016** and **W.P.(MD) No.22395 of 2016**, while dealing the identical issues, has set aside the orders for recovery impugned therein.

16. 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 second 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 hereby set aside.

17. For the above reasons, this Writ petition is allowed.

18. Consequently, connected miscellaneous petition is closed.

19. There shall be no order as to costs.

11.01.2024

Index :Yes/No
Neutral Citation :Yes/No

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BATTU DEVANAND, J.

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