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W.A.No.252 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2025

CORAM :
THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE P. DHANABAL

W.A.No.252 of 2023

1. The Additional General Manager
State Bank of India
Centralised Pension Processing Centre
Code No.4470, 112/4, Kaliyamman Koil St.
Virugambakkam, Chennai – 600 092.
 2. The Branch Manager
State Bank of India
Neyveli 607 801, Cuddalore District. .. Appellants
- Vs.
1. S.Marimuthu
 2. The Regional Pension Officer
Raj Bhavan, Central Government Office
Besant Nagar, Chennai. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letter Patent, to set aside the order dated 23.09.2022 passed in W.P.No.11032 of 2016.

For the Appellants : Mr.B.Raghavulu Naidu

For the Respondents : Mr.K.Srinivasan
for R1

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court dated 23.09.2022 made in W.P.No.11032 of 2016.



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2. The first respondent was a Constable in the Central Industrial Security Force, that is the CISF, and he had been working from 2002 up to 2014. In the year 2014, he has been compulsorily retired from service, therefore, he was entitled to receive pension fixed in this regard, which was fixed at Rs.14,300/-. The said pension has been paid through the appellants.

3. When that being the position, all of a sudden, after two years, that is on 25.01.2016, proceedings were issued stating that excess amount of Dearness Allowance was paid to the first respondent, therefore, it has to be recovered and therefore orders have been passed for recovery of a sum of Rs.1,42,452/- by the order dated 25.01.2016, which was challenged before the Writ Court.

4. The learned Writ Court, having considered the factual matrix, has recorded the following factual finding:-

"3. That apart, the petitioner was allowed to retire from service in the year 2014 and the order impugned was issued after a lapse of two years from the date of retirement of the writ petitioner. In the event of any such recovery on the pensioner, the same would result in extreme hardship, as the petitioner was receiving a sum of Rs.14,300/~ as pension and it would be difficult for him even to manage day~to~day affairs of his family.



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4. Thus, this Court is of an opinion that the recovery of excess amount would cause hardship to the writ petitioner and more so, no show cause notice was issued prior to the issuance of recovery order after a lapse of two years of the date of compulsory retirement of the writ petitioner.

5. Any order affecting the rights of a pensioner is to be issued only after affording an opportunity by issuing show cause notice. Since no opportunity was provided to the petitioner, the order impugned is liable to be set aside. Accordingly, the order passed by the 2nd respondent dated 25.01.2016 to deduct a sum of Rs.1,42,452/~ from the petitioner-s pension is quashed and the sum of Rs.8000/~ already recovered from the petitioner is directed to be reimbursed within a period of four (4) weeks from the date of receipt of a copy of this order. It is made clear that the respondents shall fix the correct pension as applicable in accordance with the rules in force. However, the excess Dearness Allowance already paid cannot be recovered."

5. The learned Judge has recorded that the order dated 25.01.2016 has been passed after two years, after having paid the pension fixed by them and moreover, before passing this order, no opportunity had been given to the first respondent. Therefore, the learned Judge, at paragraph 5 of the impugned order, which has been extracted hereinabove, while quashing the impugned order before the Writ Court dated 25.01.2016, has given liberty to the appellants to fix the correct pension. Only the recovery proceedings issued by the appellant alone has been interfered with by the learned Judge.



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6. Based on these reasons, we do not think that the impugned order is liable to be interfered with. Moreover, in **State of Punjab and Ors. vs. Rafiq Masih (White Washer)**¹, the Supreme Court has made it clear what are all the situations under which such recovery has become impermissible and illegal. The relevant portion of the said order is as thus:-

"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

¹ (2015) 4 SCC 334



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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."

7. In view of the settled position, apart from the reasons that have been given by the learned Judge in the impugned order, we do not think that the impugned order is liable to be interfered with. Resultantly, the appeal fails and hence, it is liable to be dismissed, accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, C.M.P.No.2655 of 2023 is closed.

(R.S.K., J.) (P.D.B., J)
18.07.2025

Speaking Order/Non-Speaking Order

Index:Yes/No

Internet:Yes/No

Neutral Citation:Yes/No

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To:

1. The Regional Pension Officer
Raj Bhavan, Central Government Office
Besant Nagar, Chennai.



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R. SURESH KUMAR, J.
AND
P. DHANABAL, J.

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