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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.(MD).No.9485 of 2019
and
W.M.P.(MD).Nos.7459 and 14396 of 2019

E.Muthiah .. Petitioner

Vs.

1.The Director,
Treasuries and Accounts Department,
Panagal Building,
No.1, Jeenis Road,
Sydapet, Chennai – 15.

2.The Regional Joint Director,
Treasuries and Accounts Department,
No.1 Type IV Quarters,
BSNL Campus, Vannarpet,
Tirunelveli.

3.The District Treasury Officer,
District Treasury,
Collectorate Campus,
Kokkirakulam,
Tirunelveli.

4.The Assistant Treasury Officer,
Sub Treasury,
Tenkasi,
Tirunelveli District. .. Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his proceedings Na.Ka. No.1237/2018 dated 23.11.2018 and quash the same and direct the 4th respondent not to deduct any amount in future from the petitioner's pension account and direct the 4th respondent to re-deposit the already recovered amount from the petitioner's family pension account.

For Petitioner : Mr.G.Karthik

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

This Writ Petition is filed by the petitioner challenging the revision of pension and order of recovery of excess pay made to the petitioner.

2. The petitioner has retired from service as early as in the year 2004. In the year 2018, the pension paid to him for the period from 01.03.2011 to 31.10.2018 was revised and it was found that he had received a sum of Rs.1,82,261/- as excess pension. Thereby, the excess payment was directed to be recovered from the future pensions and re-fixation of pension was also made.

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3. The petitioner was a Village Administrative Officer at the time of retirement and he falls under the category of Group 'D' and has retired as early as on 30.04.2004. He was paid excess pension from 01.03.2011 to 31.10.2018. The relief claimed by the petitioner herein squarely falls within the orders passed by the Hon'ble Apex Court in the case of ***State of Punjab and others Vs. Rafiq Masiq (White Washer)*** reported in ***AIR 2015 SC 696***.

4. The learned Additional Government Pleader appearing for the respondents states that the above decision of the Apex Court would not be applicable to the excess pay of pension and the same would be applicable only to the cases of excess pay. He has also submitted that without affording an opportunity, the impugned order has been passed and agrees to re-consider the case of the petitioner, if the matter is remitted back to the concerned authority.

5. Though the above argument seems to be acceptable, I am of the view that the petitioner herein is a pensioner and he has retired from service as early as on 30.04.2004 and the impugned order has been passed in the year 2018. In the judgment cited supra, the Hon'ble Apex Court has observed the plight of the pensioners in the following words:

> *“It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have*

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sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation."

6. In the present case, the petitioner is a pensioner and the above observations would be applicable. Though the recovery is not permissible, the authority is entitled to revise or refix the eligible pension payable to the petitioner. Accordingly, the Writ Petition is partly allowed. The impugned order is set aside only in respect of recovery and the matter is remanded back to the concerned authority insofar as re-fixation is concerned and orders shall be passed by the authorities after issuing appropriate notice to the petitioner.

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7. Accordingly, the Writ Petition stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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K.RAJASEKAR,J.

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