



WEB COPY

W.P.No.19414 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.19414 of 2014
and M.P.Nos.1 & 2 of 2014

D.Saraswathi

...

Petitioner

versus

1.The District Treasury Officer,
Villupuram.

2.The Assistant Treasury Officer,
Vanur, Villupuram District.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned orders of recovery issued by the second respondent in proceeding Na.Ka.No.A1/477/2014 dated 04.07.2014 and the subsequent impugned order of recovery issued by the second respondent in proceeding Na.Ka.No.A1/477/2014 dated 11.07.2014 and quash the same and direct the respondents to pay the revised pension as per the Accountant General authorisation dated 13.02.2014.

For Petitioner : Mr.N.Om Prakash
for Mr.R.Prem Narayan

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader



ORDER

The writ petition is filed challenging the orders of recovery dated 04.07.2014 and 11.07.2014 issued by the second respondent and for consequential direction to pay the revised pension as per the Accountant General authorisation dated 13.02.2024.

2. According to the petitioner, she is a pensioner, who worked as Headmistress and got superannuated on 31.01.1995. The pensioners, who retired between 01.06.1988 and 31.12.1995 contested the issue in respect of payment of Dearness Allowance for revising the pension had instituted proceedings before the Court and ultimately the issue went upto the Hon'ble Supreme Court and ended in favour of the pensioners by the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.8848 to 8870 of 2012 dated 17.01.2013. In compliance to the decision of the Hon'ble Apex Court, the Government had issued G.O.(Ms)No.363, Finance Department dated 23.08.2013.

3. Pursuant to the above Government Order, the Accountant General had revised the pension and issued the authorisation to the first respondent *vide* proceedings dated 13.02.2014. In compliance to the same,



the pension of the petitioner was revised and the difference amount was also paid to her. All of a sudden, without issuing any notice and affording an opportunity to the petitioner, by impugned proceedings 11.07.2014, a sum of Rs.4,20,731/- was sought to be recovered from the petitioner by directing her to deposit the same. Assailing the same, the petitioner had preferred the above writ petition.

4. The learned counsel for the petitioner submitted that even though the revision in pension was granted only based on the authorisation issued by the Accountant General on 13.02.2014, which was in due compliance to the decision of the Hon'ble Supreme Court, which resulted in the issuance of G.O.(Ms)No.363, Finance Department dated 23.08.2013 and the benefits were paid, the impugned orders seeking to recover the amounts by refixing the pension is issued, without even issuing any notice and affording an opportunity to the petitioner, which is, in violation of the principles of natural justice. It is further contended that since the petitioner is a pensioner who had retired from service as early as in the year 1995, the impugned recovery is impermissible in view of the judgment of the Hon'ble



Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334.

5. Per contra, the learned Additional Government Pleader for the respondents, even though he had not filed the counter affidavit, fairly submitted that the orders refixing the pension of recovery have been passed, without affording an opportunity to the petitioner and therefore the matter may be remitted back to the respondents for fresh consideration, after affording necessary opportunity to the petitioner. While doing so, the issue in respect of the recovery will also be considered in view of the settled decision in *White Washer's* case stated *supra*.

6. Heard the submissions made by the learned counsel appearing on both sides and perused the materials available on record.

7. Admittedly, the petitioner, who had worked as Headmistress in the Government School, retired on 31.01.1995 and she is receiving pension from the respondents. Several pensioners who had retired between 01.06.1988 and 31.12.1995 had instituted proceedings before the Court in respect of payment of Dearness Allowance and consequently revised the



pension. The issue ultimately went upto the Hon'ble Supreme Court and by its judgment dated 17.01.2013 in Civil Appeal Nos.8848 to 8870 of 2012, the issue ended in favour of the pensioners. In compliance to the order of the Hon'ble Apex Court, G.O.(Ms)No.363, Finance Department dated 23.08.2013 came to be passed, extending the benefits for those employees who retired between 01.06.1988 and 31.12.1995.

8. As per the Government Order issued in G.O.(Ms)No.363, Finance Department dated 23.08.2013, the Accountant General had revised the pension to the petitioner and had issued authorisation to the first respondent on 13.02.2014. Pursuant to which, the pension was revised and the difference in amount was also paid to the petitioner.

9. While so, the impugned order dated 04.07.2014 was issued by which the petitioner was directed to deposit a sum of Rs.2,63,081/- immediately to the treasury account. The impugned order reads that the same was passed based on the phone instructions received from the Treasury Officer. The relevant portion is extracted hereunder:-

“பொருள் : ஓய்வூதியம் அரசாணை எண்:363-ன் படி
திருத்திய ஓய்வூதியம் - வழங்கியது



வழங்கிய தொகையை மீள பிடித்தம் செய்தல் - தொடர்பாக
பார்வை : கருவூல அலுவலர் மாவட்ட கருவூலம் விழுப்புரம்
அவர்களின் தொலைபேசி தகவல்
பார்வையில் காணும் கருவூல அலுவலர் அவர்களின்
தொலைபேசி தகவலின் படி அரசாணை எண்: 363-ன் படி
திருத்திய ஓய்வூதிய தொகை ரூ.2,63,081/- (ரூபாய் இரண்டு
இலட்சத்து அறுபத்தி மூவாயிரத்து எண்பத்தி ஒன்று மட்டும்)
இக்கடிதம் கிடைத்த உடன் அரசு கணக்கில் சேர்த்திட
அறிவுறுத்தப்படுகிறார்கள்.”

10. Subsequently, another impugned order dated 11.07.2014 was issued stating that wrong calculation has been made in the earlier order dated 04.07.2014 and the petitioner was directed to deposit a sum of Rs.4,20,731/- immediately to the treasury account. The relevant portion is extracted hereunder:-

“பொருள் : ஓய்வூதியம் அரசாணை எண்:363-ன் படி
திருத்திய ஓய்வூதியம் - வழங்கியது
வழங்கிய தொகையை மீள பிடித்தம் செய்து -
அனுப்புதல் - சார்பு
பார்வை : கருவூல அலுவலர் மாவட்ட கருவூலம் விழுப்புரம்
அவர்களின் தொலைபேசி தகவல்
பார்வையில் காணும் கருவூல அலுவலர் அவர்களின்
தொலைபேசி தகவலின் படி அரசாணை எண்: 363-ன் படி
திருத்திய ஓய்வூதிய தொகை ரூ.4,20,731/- (ரூபாய் நான்கு
இலட்சத்து இருபத்தாயிரத்து ஏழுநூற்றி முப்பத்தி ஒன்று
மட்டும்) அரசு கணக்கில் செலுத்தப்படவேண்டும்.
தங்களுக்கு கடிதத்தில் ரூ.2,63,081/- இத்தொகை
தவறுதலாக செலுத்துமாறு தெரிவிக்கப்பட்டுள்ளதால்,
இத்திருத்திய தொகையினை அன்னார் அரசு கணக்கில்



ரூ.4,20,731/- ரூபாய் செலுத்திட அறிவுறுத்தப்படுகிறது.
செலுத்தப்பட்ட விவரத்தினை இவ்வலுவகத்திற்கு நகல்
அனுப்புமாறு கேட்டுக் கொள்ளப்படுகிறார்.”

11. On perusal of the impugned orders, it reveals that the same have been passed without issuing any notice affording an opportunity to the petitioner. As per the impugned orders, the pension is sought to be revised and only pursuant to which, this amount is sought to be recovered. While so, necessarily the respondents ought to have issued notice to the petitioner and only after affording her necessary opportunity, a decision would have been taken.

12. In the absence of any such notice, this Court is of the considered view that the impugned orders issued by the respondents is in violation of the principles of natural justice. Further, in view of the settled decision in *White Washer's* case stated *supra*, any order of recovery from the employees who had retired from service, is impermissible. The relevant portion of the said judgment is extracted hereunder:-

“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 is sought to be made as per the impugned orders is impermissible in view of the decision in *White Washer's* case.

14. In view of the above observations, this Writ Petition stands *allowed* and the impugned orders dated 04.07.2014 and 11.07.2014 passed by the second respondent for recovery are set aside. However the respondents are at liberty to issue proper notice to the petitioner in respect of re-fixation of pension and after affording an opportunity to the petitioner, take a decision, on merits and in accordance with law.

15. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

30.10.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

WEB COPY

- 1.The District Treasury Officer,
Villupuram.
- 2.The Assistant Treasury Officer,
Vanur, Villupuram District.



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W.P.No.19414 of



G.ARUL MURUGAN, J.

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