

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

W.P.(C).No.26618 of 2015 (B)

PETITIONER(S):-

THAMPI. A., AGED 72 YEARS, S/O.ADICHAN,
V/49, MUTTAVILA VEEDU, KIZHAKKEKARA, PULAMON P.O.,
KOTTARAKKARA VILLAGE,
KOTTARAKKARA TALUK, KOLLAM DISTRICT, PIN - 691531.

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.M.M.VINOD KUMAR
SMT.K.M.RAMYA
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER.

RESPONDENT(S):-

1. STATE OF KERALA,
TO BE REPRESENTED BY PRINCIPAL SECRETARY,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. DISTRICT JUDGE
DISTRICT COURT, KOLLAM-691501.
3. SUB TREASURY OFFICER,
SUB TREASURY OFFICE, KOTTARAKKARA-691530.
4. SENIOR ACCOUNTS OFFICER,
INDIAN AUDIT AND ACCOUNTS DEPARTMENT,
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A & E) KERALA,
THIRUVANANTHAPURAM-695001.

BY GOVERNMENT PLEADER SMT.M.J.RAJASREE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.26618 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT-P1: PHOTOCOPY OF THE ORDER BEARING DATED 7.1.11
NO.A2:11987/10 OF THE 2ND RESPONDENT.
- EXHIBIT-P2: PHOTOCOPY OF THE PENSION PAYMENT ORDER BEARING
NO.PPO NO.141176131 DATED 14.2.11.
- EXHIBIT-P3: PHOTOCOPY OF PENSION TREASURY S.B.ACCOUNT PASS
BOOK NO.3778 OF THE PETITIONER.
- EXHIBIT-P4: PHOTOCOPY OF ORDER BEARING NO.C1.9229/2014
DATED 23.9.14 OF THE 2ND RESPONDENT.
- EXHIBIT-P5: PHOTOCOPY OF THE GRATUITY PAYMENT ORDER BEARING
NO.P.03-2101161687/1/P/14/15/7023951 DATED 20.11.14 SIGNED
BY 4TH RESPONDENT.
- EXHIBIT-P6: PHOTOCOPY OF THE ORDER BEARING
NO.P03/01/2101161687/1514236833/1145 DATED 20.11.14
OF 4TH RESPONDENT.
- EXHIBIT-P7: PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER DATED 22.1.15 TO RESPONDENTS 2 TO 4.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.26618 of 2015-B

Dated this the 20th day of November, 2015

JUDGMENT

The petitioner is aggrieved with the fact that there is recovery ordered on the ground that there is an erroneous fixation of family pension granted to the petitioner.

2. The petitioner's wife was a Part-time Sweeper at the Munsiff Court, Kottarakkara. The petitioner's wife expired on 03.02.2010 and the petitioner was sanctioned family pension as per Exhibit P2 on 14.02.2011 with effect from 04.02.2010. While sanctioning family pension, the petitioner was sanctioned minimum family pension for full-time employees, while the petitioner was eligible only for minimum family pension for part-time employees. The petitioner had been drawing such amounts for the subsequent years also.

3. The Death-cum-Retirement Gratuity [DRCG) was pending sanction and when the same was taken up, the authorities detected that the petitioner had been erroneously

granted full-time family pension, when the entitlement was only to part-time family pension. Hence, the excess amounts were directed to be recovered from the DCRG.

4. The petitioner contends that the issue is covered by a Division Bench decision of this Court in ***Saraswathi v. Southern Railway* [2014 (2) KLT 494]**. A reading of the said judgment would indicate that the over drawals enjoyed by the petitioner therein, wife of a deceased pensioner, spread over for a period of more than 4½ years, was directed to be recovered from her future pension. The Court found that on facts the recovery would not be proper, especially since it would affect the future quantum of pension interfering with the right to live guaranteed to the petitioner under Article 21 of the Constitution. The learned counsel also relied on the decision ***State Punjab v. Rafiq Musih (White Washer)* [2015 (1) KLT 429 (SC)]**.

5. The petitioner has made a representation at Exhibit P7 before the 2nd respondent. However, the petitioner shall make a fresh representation before the 1st respondent within a period of two weeks. On receipt of such representation,

the 1st respondent is directed to consider the request for waiver sympathetically in tune with the directions contained in **Rafiq Musih (White Washer)** and **Saraswathi (both supra)**.

The writ petition is disposed of as above. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]