IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.8769 of 2017 and
W.M.P.Nos.9609 to 9611 of 2017

M.H.Fathima Marium ... Petitioner

Vs.

1.The Joint Director,
Integrated Child Development Scheme,
Social Welfare Department, Taramani,
Chennai - 600 113.

2.The District Planning Officer,
Integrated Child Development Scheme,
Social Welfare Department,
Teynampet, Chennai - 600 018.

3.The Pay and Accounts Officer,
Pay and Accounts Office (North)
Singaravelar Maligai,
Collectorate Building, Rajaji Salai,
Chennai - 600 001.

4.The Manager,
Central Bank of India,
Huzur Garden, Sembiam,
Chennai - 600 011.

5.The Karur Vysya Bank Ltd.,
Egmore Branch,
No.44/1, Pantheon Road,
Egmore, Chennai - 600 008. ... Respondents

(R5 impleaded vide order dated 22.06.2017 made in W.M.P.No.11423 of 2017 in W.P.No.8769 of 2017)

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the 3rd respondent vide its order PAO (N) 1/2016 dated 12.09.2016 quash the same and consequently direct the respondents 1 to 3 to pay Death cum Retirement Gratuity and Special Provident Fund, which has been unauthorisedly blocked on the instructions of the 3rd respondent.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.S.N.Parthasarathi,
Government Advocate (R1 & R2)
R3 & R4 - no appearance

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records of the 3rd respondent dated 12.09.2016, to quash the same and consequently direct the respondents 1 to 3 to pay Death cum Retirement Gratuity and Special Provident Fund, which has been unauthorisedly blocked on the instructions of the 3rd respondent.

2.It is the case of the petitioner that she was working as a Supervisor Grade-I in the Office of the Integrated Child Development Scheme, Social Welfare Department, Taramani, Chennai and that she was relieved from the services on superannuation on 31.01.2015, after completing nearly 34 years of service. When the petitioner was about to draw her monthly pension during October 2016, she was prevented from operating the Bank account and she was informed that her Bank account was blocked based on the instruction from the 3rd respondent. On verification, the petitioner came to know that the Death cum Retirement Gratuity amount payable to her to the extent of Rs.5,83,407/- was originally transferred by the 2nd respondent, through ECS, to the account of one H.Fathima Marium bearing Account No.1283155000070860 in the 5th respondent Bank.

3.It is pertinent to note that the amount has been sent to another person having similar name , who has nothing to do with the Department. Thereafter, the petitioner gave a representation on 17.11.2016 eliciting all the details, for which the respondents directed her to produce the bank statement of the person in whose name the amount was illegally transferred. With great difficulty the petitioner also produced the bank statement of H.Fathima Marium from the 5th respondent Bank. On 25.11.2016, the 1st respondent instructed the 3rd respondent to take immediate action against the illegal transfer of money in favour of a dubious person and further directed to pay the Death cum Retirement Gratuity amount in favour of the petitioner. However, the respondents have not taken any action to settle the petitioner's retirement benefits, including the monthly pension.

4.It is also pertinent to note that inspite of the notice sent, the respondents have not taken any action either to recover the illegally transferred amount or to pay the petitioner's Death cum Retirement Gratuity and Special Provident Fund. By the impugned order dated 12.09.2016, the 3rd respondent has stated that he is suspecting from his office records that the Government money has been misappropriated and has been credited by way of presenting irregular claims by Child Development Project Office I and VII in the Office of the Pay and Accounts Officer (North), Chennai. In these circumstances, the 3rd respondent requested the 4th respondent to freeze the petitioner's account. Accordingly, pursuant to the communication dated 12.09.2016 by the 3rd respondent, the 4th respondent also freezed the petitioner's bank account and did not allow the petitioner to operate the account.

5.Though the respondents have not filed their counter, Mr.S.N.Parthasarathi, learned Government Advocate appearing for the respondents 1 & 2 submitted that the 1st respondent, by his letter dated 27.04.2017, informed the petitioner's counsel that the sum of Rs.5,83,407/-payable to the petitioner towards Death cum Retirement Gratuity and Special Provident Fund was misappropriated by one Tmt.R.Vadivazhagi, the Superintendent of the Social Welfare Department and that disciplinary action is being taken against her and the same is also pending. Further, the 1st respondent has stated that proceedings have been initiated against the said R.Vadivazhagi by the Vigilance and Anti Corruption Department. It was also informed that the said Superintendent has been placed under suspension. It has also been informed to the petitioner's counsel that after recovering the amount from the said R.Vadivazhagi, the amount would be paid to the petitioner.

6.The stand taken by the 1st respondent in his communication dated 27.04.2017, cannot be accepted for the reason that the petitioner is bound to receive the money from the 1st respondent towards Death cum Retirement Gratuity and Special Provident Fund. For the fault of one of the staff of the Department, the petitioner cannot be put to hardship and prejudice. When it is found that one R.Vadivazhagi had misappropriated the funds, liable to be paid to the petitioner, the Joint Director, who is the Head of the Department is bound to provide the funds which are legally liable to be paid to the petitioner. Merely because the said R.Vadivazhagi has misappropriated the funds, that cannot be put against the petitioner, preventing her from receiving the money. By the fraud committed by the said R.Vadivazhagi, the petitioner was not in a position to receive the money and operate her bank account for no fault of her. As the Head of the Department, the 1st respondent should have taken care in supervising the payments made to the retired employees of the Department.

7.Therefore, I am of the considered view that the petitioner should be paid the outstanding amount of Rs.5,83,407/- without any further delay. As already stated, for no fault of the petitioner, her bank account cannot be freezed by the 3rd respondent. The impugned order dated 12.09.2016 is also liable to be set aside. Accordingly, the impugned order dated 12.09.2016 is set aside. I direct the 1st respondent to pay the Death cum Retirement Gratuity and Special Provident Fund together with interest at the rate of 6% per annum to the petitioner within a period of six weeks from the date of receipt of a copy of this order. It is needless to say that the 1st respondent should initiate stringent action against the erring Superintendent viz., R.Vadivazhagi in accordance with law. The 1st respondent shall pay the sum of Rs.5,38,407/- to the petitioner and recover the said amount from the said Superintendent R.Vadivazhagi.

8.In the result, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Joint Director,
Integrated Child Development Scheme,
Social Welfare Department, Taramani,
Chennai - 600 113.

2.The District Planning Officer,
Integrated Child Development Scheme,
Social Welfare Department,
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5.The Karur Vysya Bank Ltd.,
Egmore Branch,
No.44/1, Pantheon Road,
Egmore, Chennai - 600 008.

+2cc to M/s.V.Karthikeyan,Advocate sr.44112

+1cc to Government Pleader sr.23161

W.P.No.8769 of 2017 and
W.M.P.Nos.9609 to 9611 of 2017

ad(co)
ss(4/7/2017)