

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.16061 of 2016

WMP.No.13873 of 2016

L.Classic Mary

... Petitioner

vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Finance (Pension) Department,
Fort St.George, Chennai-600 009.

2.The Director,
Treasury & Accounts Department,
Chennai.

3.The Additional Treasury Officer,
Nagercoil, O/o. District Treasury Office,
Nagercoil.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent in his proceedings Ka.Mu.No.583/J3/2016 dated 22.01.2016 and quash the same and consequently direct the 2nd and 3rd respondents herein to pay monthly family pension without any reduction.

For Petitioner

: Mr.N.Kolandaivelu

For Respondents

: Mr.P.Sanjai Gandhi,
Additional Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner would state that her husband, namely T.Vilfret was working as Personal Assistant to Superintendent of Police, Kanniyakumari District and he died in harness while in service on 19.12.2007, leaving behind the petitioner and his son

and the petitioner was receiving family pension from the year 2008 onwards and from January 2012, she was paid with monthly family pension of Rs.22,562/- and from April 2013, she was paid monthly family pension of Rs.24652/- and from January 2015, after statutory deductions, she was paid monthly family pension of Rs.17,736/- and in the month of December, 2015, she was paid with 18,764/-. However, to her shock and surprise, the third respondent has passed the impugned order dated 22.01.2016 stating that family pension paid to her was in excess of the eligible amount and therefore, sought to recover the alleged excess payment of Rs.5,62,252/- from her monthly family pension and challenging the legality of the same, the petitioner has come forward with this writ petition.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned order of the third respondent and would submit that the said order is per se in violation of the principles of natural justice for the reason that before ordering recovery, the petitioner has not been put on notice and therefore, prays for interference.

4. Per contra, Mr.P.Sanjai Gandhi, learned Additional Government Pleader has drawn the attention of this Court to the counter affidavit filed in support of the vacate stay petition and would submit that the excess amounts were paid due to wrong fixation of pension and therefore, recovery of the excess amount was rightly ordered by the third respondent and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the entire materials available on record.

6. A perusal of the impugned order of recovery passed by the third respondent would clearly reveal that before ordering recovery, no opportunity whatsoever has been offered to the petitioner. It is a well settled position of law that recovery of alleged excess amount paid visits the petitioner with grave civil consequences and the third respondent ought to have put the petitioner on notice before ordering recovery, but unfortunately the third respondent failed to do so and hence, on the sole ground, the impugned order warrants interference.

7. It is also brought to the knowledge of this Court that the matter in issue is squarely covered by a judgment of the Hon'ble Supreme Court in State of Punjab and Others v. Rafiq Masih (White Washer) and Others [(2015) 4 SCC 334]. It is relevant to extract para 18 of the said judgment:

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 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.

Admittedly, the petitioner cannot be blamed for the alleged excess payment made and in the light of the ratio laid down in the above cited judgment, this Court is of the view that no purpose would be achieved by remanding the matter once again to the third respondent.

8. In the result, this Writ Petition is allowed and the impugned order of the third respondent in his proceedings Ka.Mu.No.583/J3/2016 dated 22.01.2016 is set aside and the third respondent is directed to repay the amount recovered from the family pension of the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jvm
To

1.The Secretary,
The Government of Tamil Nadu,
Finance (Pension) Department,
Fort St.George, Chennai-600 009.

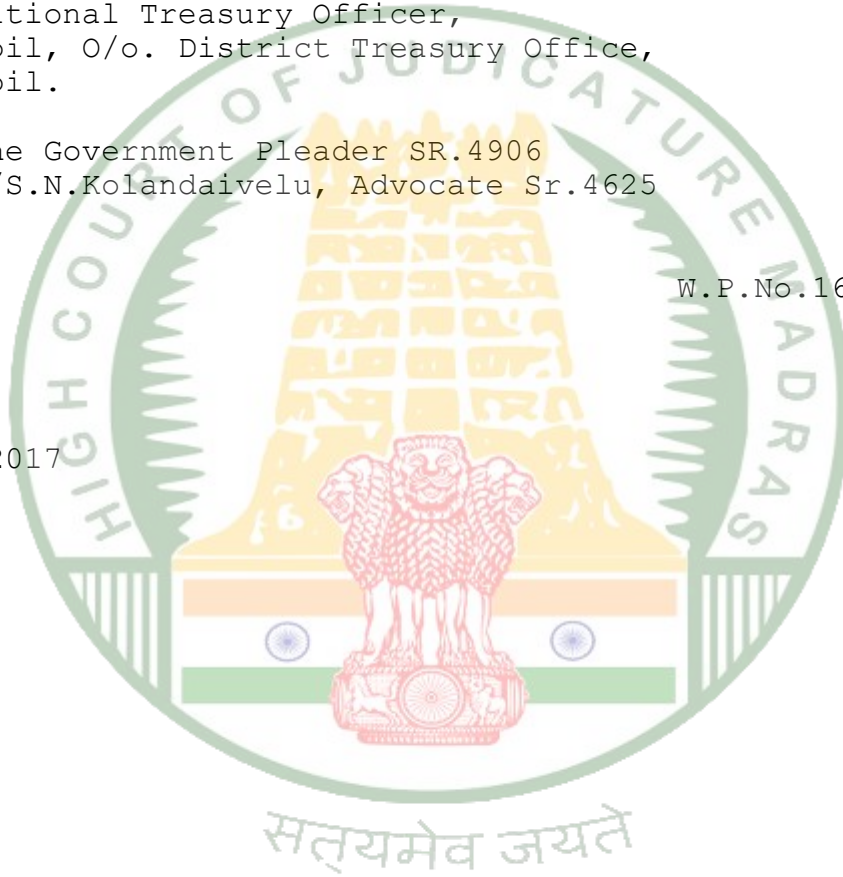
2.The Director,
Treasury & Accounts Department, Chennai.

3.The Additional Treasury Officer,
Nagercoil, O/o. District Treasury Office,
Nagercoil.

+1cc to the Government Pleader SR.4906
+1cc to M/S.N.Kolandaivelu, Advocate Sr.4625

W.P.No.16061 of 2016

nr I[co]
srg 13/2/2017



WEB COPY