IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13715 of 2017
and
WMP.No.14904 of 2017

Smt.V.Jayalakshmi ... Petitioner

-Vs-

1. The Government of Tamil Nadu,
   Rep. by its Principal Secretary,
   Revenue Department, Fort St. George,
   Chennai - 600 009.

2. The Commissioner of Treasury and Accounts,
   Panagal Buildings, No.1, Jeenis Road,
   Saidapet, Chennai - 600 015.

3. The Principal Accountant General (A & E),
   Office of the Accountant General,
   Teynampet, Chennai - 600 018.

4. The Additional Treasury Officer,
   District Treasury, Coimbatore,
   Huzur Road, Collectorate Campus,
   Coimbatore - 641 018.

5. The Treasury Officer,
   District Treasury, Coimbatore,
   Huzur Road, Collectorate Campus,
   Coimbatore - 641 018.

6. The Assistant Treasury Officer,
   Sub-Treasury Office,
   Taluk Office Campus,
   Pollachi.

7. The District Collector,
   Collectorate Building,
   Coimbatore - 641 018.

8. Assistant Commissioner (Revenue),
   Coimbatore - 641 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the

Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the fifth respondent in Na.Ka.No.005237/2017/C/3, dated 23.02.2017 and quash the same and direct the respondents to restore pension of the petitioner as fixed by the Additional Treasury Officer, Coimbatore by an order in December, 2016 by refunding the recovered amount to the petitioner.

For Petitioner : Mr.Ramaswamy Meyyappan

For R1, R2 R4 to R8 : Mr.R.Vijayakumar
Additional Government Pleader

For R3 : Mr.S.Balaji

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O R D E R

The order of recovery in respect of excess payment issued by the respondent in proceedings dated 23.02.2017 is sought to be quashed in this writ petition.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner is a family pensioner and her husband Late.Shri.A.V.Krishnamoorthy was working as Deputy Tashildar and retired from service. The husband of the writ petitioner was receiving pension from 01.07.1982 and after his demise, the writ petitioner is receiving family pension from the year 2006. The respondents suddenly issued an order of recovery in proceedings dated 23.02.2017 stating that there was an audit objection in respect of the excess payment made to the husband of the writ petitioner. Accordingly, they have taken steps to recover the excess amount from the petitioner.

3.This Court is of the opinion that the writ petitioner is now aged about 87 years and she is a family pensioner and there was absolutely no misrepresentation on the part of the writ petitioner in respect of the fixation of pension / family pension. The authorities competent had fixed the family pension of the writ petitioner based on the Last Drawn Pay received by the deceased husband of the writ petitioner. If at all any mistake in relation to the fixation of pay, certainly, it was at the instance of the officials concerned and not at the instance of the writ petitioner. Thus, now after a lapse of many years, the writ petitioner cannot be penalized by imposing a recovery and it will certainly affect the livelihood of the writ petitioner, more specifically in old age.

4.This Court has to consider the fact that at the age of 87, the writ petitioner requires funds to meet out her medical expenditure and reduction of pension or any recovery from pension will affect her livelihood by all means. This apart, the Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer) & others case, (2015) 4 SCC 334 settled the legal principles in relation to the recovery of excess amount from the employees. The 18th paragraph of the Judgment is relevant and the same is extracted here under.

> "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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from 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."

5.The Hon'ble Apex Court in sub clause (ii) of the paragraph 18 held that no recovery can be imposed in respect of the retired employees. In the case on hand, the writ petitioner is a family pensioner and aged about 87 years old. Thus, the writ petition deserves consideration in the hand of this Court. Accordingly, the order impugned passed by the fifth respondent in proceedings

Na.Ka.No.005237/2017/C/3, dated 23.02.2017 is quashed and the respondents are directed to reimburse the amount already recovered from the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order.

6.Accordingly, the writ petition stands allowed. However, there is no order as to costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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   Coimbatore - 641 018.

+1cc to Mr.S.Balaji, Advocate, S.R.No.79459
+1cc to Mr.Ramasamy, Advocate, S.R.No.79970
+1cc to the Government Pleader, S.R.No.79914

W.P.No.13715 of 2017

RRK(04/12/2017)