

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2017

Coram

The Hon'ble Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.8039 of 2016
and
W.M.P.No.7156 of 2016

K.M.Kamalam

...Petitioner

Vs.

1. State of Tamil Nadu, rep. by its
Secretary to Government
Higher Education Department
Fort St. George, Chennai - 600 009.
2. The Director of Collegiate Education
DMS Campus, College Road
Nungambakkam
Chennai - 600 034.
3. The Joint Director of Treasuries
Coimbatore Region
Coimbatore.
4. The Principal
Chikkana Govt. Arts College
Tiruppur-2
Tiruppur District.
5. The Treasury Officer
District Treasury
Tiruppur, Tiruppur Dist.

सत्यमेव जयते...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records relating to the order passed by the 5th respondent in Na.Ka.No.15942/2015/L1 dated 24.11.2015 & RC.No.15942/2015/L1 dated 27.11.2015, quash the same and further direct the respondents 2 to 5 to refund the recovery made from the petitioner and to continue to pay Family Pension treating the petitioner husband's last drawn salary as Rs.3700-5700/- with corresponding pay scale revision based on various Pay Commission recommendations.

For Petitioner : Mr.Venkataswamy Babu
For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

The writ petitioner is a family pensioner and the orders of recovery issued by the 5th respondent in Na.Ka.No.15942/2015/L1 dated 24.11.2015 & RC.No.15942/2015/L1 dated 27.11.2015 are under challenge in this writ petition.

2. The husband of the writ petitioner worked as Lecturer and died while in service.

3. The learned counsel for the writ petitioner states that the husband of the writ petitioner was promoted to the post of Professor and the pay was fixed accordingly. However, after the demise of the husband of the writ petitioner, family pension was sanctioned and the writ petitioner is continuously receiving the family pension from the Treasury Officer, District Treasury, Tiruppur. Surprisingly, an order of recovery was served to the writ petitioner from the Treasury office vide proceeding No.Na.Ka.No.15942/2015/L1 dated 24.11.2015, stating that there was an audit objection with regard to pay fixation of the husband of the writ petitioner. Further, it is stated that there were certain contradictions in the fixation of pay and erroneously the revised pension was fixed at Rs.13,920/-Thus, the order of recovery was issued to recover the alleged excess payment made to the writ petitioner.

4. The learned counsel appearing for the writ petitioner contended that the impugned orders of recovery dated 24.11.2015 and 27.11.2015 are issued without issuing any show cause notice / opportunity to the writ petitioner. The orders impugned are in violation of principles of natural justice.

5. However, the writ petitioner is a family pensioner and no recovery on the family pension will lie and in fact there were no mis-representation either on the side of the writ petitioner or the husband of the writ petitioner. The fixation of revised pension was provided at the instance of the respondents and the entire calculation of pension was also carried out by the office of the respondents. Thus, the writ petitioner cannot be blamed for any alleged fixation and because of such alleged fixation, the petitioner cannot be penalised. The petitioner is aged about 82 years and leading her life from the outcome of family pension and the recovery will affect her

normal life. At this old age, it is presumed that the writ petitioner certainly needs assistance for medical expenditure and any recovery will certainly affect her normal routine life, more specifically to meet out her medical expenditure in old age.

6. In the matter of recovery, the Hon'ble Supreme Court of India has issued guidelines in the case of State of Punjab Vs. Rafiq Masih reported in (2015) 4 SCC 334, para 18 of the said Judgment is relevant for the purpose of the present case in hand, which 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 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."

7. The case of the writ petitioner falls under the category (ii) and thus, no recovery can be imposed on the retired employee. The writ petitioner, being a family pensioner, the impugned orders of recovery are unsustainable.

8. Accordingly, the impugned orders of recovery passed by the 5th respondent in proceeding Nos. Na.Ka.No.15942/2015/L1 dated 24.11.2015 & RC.No.15942/2015/L1 dated 27.11.2015 are quashed and the amount already recovered shall be reimbursed to the petitioner. Writ petition stands allowed. However, no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Secretary to Government
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5. The Treasury Officer
District Treasury
Tiruppur, Tiruppur Dist.

+1 cc to M/s.Venkataswamy Babu Advocate sr 58915
+1 cc to the Government Pleader sr 59989

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aa11/09/2017