IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.09.2017
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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27976 of 2004
And W.P.M.P. No.33998 of 2004

M.Angammal ... Petitioner

Vs.

1. The Accountant General
(Accounts & Entitlements)
Chennai - 600 018.

2. The Treasury Officer
Office of the Treasury Office
Coimbatore
PIN 641 018. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus call for the records of the 2nd respondent in K.Dis.29552/2003/V2 dated 4.11.2003 and quash the same and direct the respondents to continue the Family Pension without recovering any amount in the Pension amount of the petitioner.

For Petitioner : S.Gunaseelan
For Respondents : Mr.M.Elumalai
Government Advocate for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus to call for the records of the 2nd respondent in K.Dis.29552/2003/V2 dated 4.11.2003 and quash the same and direct the respondents to continue the Family Pension without recovering any amount in the Pension amount of the petitioner.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing on behalf of the second respondent.

3.The petitioner who is a widow, challenged the recovery proceeding in K.Dis.29552/2003/V2 dated 4.11.2003 which was communicated by the Treasury Officer, Coimbatore to the Accountant General, Chennai.

4.The case of the petitioner is that, her husband late.V.Marudam Chettiyar, had worked as a Forest Watcher in the Forest Department, Coimbatore Division. He retired from service on 30.06.1979 and died on 17.11.1993. Thereafter, the first respondent passed an order in G.O.Ms.No.10/Finance Department dated 09.08.1989, for grant of ex-gratia family pension to the petitioner at Rs.375/- per month from 18.11.1993. Apart from that the first respondent has also passed Government Orders in G.O.Ms.No.118, Finace (Pension), dated 14.02.1996 and G.O.Ms.No.283, Finance (Pension), dated 15.09.1996, stating that half of the service of the Government servant in temporary establishment rendered in non-pensionable cadre has to be taken into account for pension calculation with effect from 01.04.1943. Thus, the husband of the writ petitioner has become eligible to get pension, who rendered 35 years 3 month of service in the post of Forest Watcher in the Forest Department and it was calculated at the rate of half of the service i.e., 17 years 2 months. But the husband of the writ petitioner was not paid with pension from 01.07.1979 to 17.11.1993 (till his death). Further the respondents have enhanced the family pension to the petitioner from Rs.375/- to Rs.1,275/- with effect from 01.01.1996 on account of implementation of 5th Pay Commission.

5.Thereafter, based on the audit objection of the first respondent, the second respondent passed the impugned order dated 04.11.2003, stating that the date of effect of family pension has been wrongly noted as 18.11.1993 instead of 14.02.1996. Hence the second respondent is directed to recover Rs.22,689/- from October 2003 to July 2005.

6.On a perusal of the above proceedings, it is made clear that the petitioner has received excess family pension and there is no fault on her part. The Hon'ble Supreme Court has also quashed the similar type of recovery orders passed by the different Departments towards class III and class IV employees in the case of State of Punjab Vs. Rafiq Masih reported in (2015) 4 SCC 334. Paragraph 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.In view of the above cited Judgment, I am inclined to quash the impugned recovery proceeding in K.Dis.29552/2003/V2 dated 4.11.2003 passed by the second respondent. Accordingly, writ petition is allowed. No costs. Consequently connection miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Accountant General
   (Accounts & Entitlements)
   Chennai - 600 018.

2. The Treasury Officer
   Office of the Treasury Office
   Coimbatore
   PIN 641 018.

+1 cc to M/s.S.Gunaseelan Advocate sr 63731

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