BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.06.2017

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].No.413 of 2017
against
W.P.14898 of 2015

A.Amutha : Appellant/Petitioner

Vs.

1.The Principal Accountant General,
(A and E) Tamil Nadu,
Chennai-600 018.
2.The Additional Assistant Elementary,
Education Officer,
Illayankudi, Sivagangai District. :Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent to against the order passed by this Court in W.P(MD)No.14898 of 2015 dated 15.02.2017.

Prayer in WP(MD). 14898/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent s order in Na.Ka.No.452/AA/2014 dated 11.05.2015 and quash the same consequently direct the 1st respondent to refund the illegal deduction of Rs.1,72,011/- and sanction the revised pension with arrears to the petitioner.

For Appellant : Mr. Mr.A.Haja Mohideen

For Respondents : Mr.V.Muruganantham,
Additional Government Pleader

JUDGMENT

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[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.A.Haja Mohideen, learned counsel appearing for the appellant and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents.

2.By consent, the Writ Appeal is taken up for final disposal.

3.This Writ appeal is directed as against the order dated 15.02.2017 made in W.P(MD)No.14898 of 2015.

4.The said Writ Petition was filed by the appellant challenging the proceedings of the second respondent, dated 11.05.2015 by which the second respondent proposed to recover a sum of Rs.1,72,011/- being the excess amount of salary paid to the petitioner on account of wrong re-fixation, which was done on 14.06.2013. The petitioner challenged the order passed by the second respondent before the Writ Court by contending that it is violation of principles of natural justice and no opportunity was granted to the appellant. Secondly, it was contented that after retirement, the question of recovery does not arise. The Writ Court considered the second point raised by the petitioner and held that since the petitioner had given an undertaking that if it was found that excess salary has been paid, it will be recovered from her in one installment and dismissed the writ petition.

5.The learned counsel appearing for the appellant would contend that before going to the issue as to whether the recovery can be effected or not, the first issue would be that the petitioner was not afforded reasonable opportunity to put forth his case and order of recovery came to be passed solely based upon a audit report, dated 25.09.2014. Further, it is submitted that the copy of said report was not furnished in its entirety and only a calculation sheet has been appended to the recovery order.

6.On a perusal of the order of recovery dated 11.05.2015 (Impugned order in the writ petition), we find that that no Show Cause Notice was issued to the petitioner before the order of recovery was passed. The case of the petitioner is that there is no wrong fixation of the salary, which was done in the year of 2013, there is no excess payment to the petitioner and hence, the question of recovery does not arise.

7. We are not satisfied with the manner in which the order dated 11.05.2015 was passed by the second respondent as it is in violation of principles and natural justice. Therefore, we are inclined to interfere with the same and while doing so, we leave open the other issue as to whether the recovery could have been effected from the petitioner after retirement to be decided if a need arises at a later point of time.

8.In the result, the Writ Appeal is allowed and the order passed in the writ petition is set aside and the second respondent is directed to forward the full text of the audit objection namely the relevant portion of the audit report dated 25.09.2014 within a period of ten days from the date of receipt of a copy of this Judgment. On such receipt of the said particulars, the appellant is directed to raise her objection upon the proceedings dated 11.05.2015 within a period of 15 days thereafter. After that, an opportunity of personal hearing shall be granted to the appellant and the second respondent is directed to consider the objections and pass a speaking order on merits and in accordance with law . No costs.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The Principal Accountant General,
(A and E) Tamil Nadu,
Chennai-600 018.

2.The Additional Assistant Elementary,
Education Officer,
Illayankudi, Sivagangai District.

+1cc to Mr.A.Haja Mohideen,Advocate,SR.60960

+1cc to M/S.Special Government Pleader,SR.60997

JUDGMENT MADE IN
W.A.[MD].No.413 of 2017
19.06.2017

MYR/VSA
KK/SKN RSK/SAR3-04.07.2017-3P-5C