



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2017

CORAM:

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.(MD)No.102 of 2011
and
M.P.(MD)No.1 of 2011

S.Ramalakshmi

... Appellant/Petitioner

Vs.

1. The Chief Educational Officer,
Pudukottai Educational District,
Pudukottai.

2. The Additional Assistant Educational Officer,
Kunderandavar Koil (Sitting)
Keeranur, Pudukottai District.

3. The District Treasury Officer,
Pudukottai District,
Pudukottai.

4. The Account General,
(Accounts & Entitlements) Tamilnadu,
Chennai.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order of this Court in W.P.(MD) No.1916 of 2008, dated 05.10.2010.

Prayer in WP(MD) . 1916/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandmus, to call for the records of the 3rd respondent made in Na.Ka.No. 14794/96/M3 dated 15/11/2006 and to quash the same as non application of mind and direct the respondents to refund the recovered amount from the petitioners family pension from the month of september 2006 within the stipulated period specified by this Honourble Court.

For Appellant

: Mr.A.Haja Mohideen

For R1 to R3

: Mr.T.S.Mohammed Mohideen

Additional Government Pleader

For R4

: Mr.P.Gunasekaran

**J U D G M E N T**

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

This intra-Court appeal is directed against the impugned order dated 05.10.2010 in W.P.(MD) No.1916 of 2008, whereby and whereunder the learned single Judge dismissed the writ petition filed by the appellant, challenging the proceedings dated 15.11.2006, directing recovery of the amount from her husband on the ground that excess amount was paid to him than his entitlement.

2. We have heard the learned counsel for the appellant, the learned Additional Government pleader on behalf of the respondents 1 and 2 and the learned Standing counsel for the respondents 3 and 4.

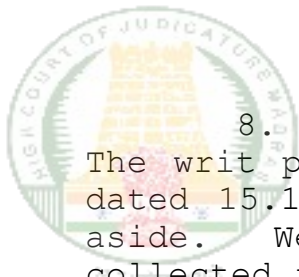
3. The husband of the appellant originally worked as a teacher. Thereafter, he was promoted as Headmaster in Thirumalairayapuram Panchayat Union School. It is the case of the respondents that the husband of the appellant made an unjustifiable claim and the same resulted in fixing the salary.

4. The third respondent taking into account the alleged excess amount paid to the husband of the appellant, initiated recovery proceedings. The employee submitted his explanation. The third respondent notwithstanding the explanation passed an order directing recovery.

5. The learned single Judge dismissed the writ petition primarily on the ground that it was only on account of the representation given by the husband of the appellant that the authorities refixed his pay and the same resulted in making payment to him.

6. There is no need for a factual adjudication of the issue raised by the appellant in this intra-Court appeal for the simple reason that the impugned order dated 15.11.2006 was passed in respect of a dead person.

7. The husband of the appellant died on 23.04.2006. The order in question was passed only on 15.11.2006. It is now evident from the proceedings that even the proceedings subsequent to the explanation given by the employee was considered only after his death. Such being the factual position, we are of the view that there is no basis for issuing the recovery order. Moreover, the amount was paid only to the employee and the same is now sought to be recovered from the legal representatives and that too by passing an order after the death of the concerned employee. We therefore do not find any material to sustain the order passed by the third respondent and the order passed by this Court dated 05.10.2010 in W.P.(MD) No.1916 of 2008.



8. In the result, the order dated 05.10.2010 is set aside. The writ petition in W.P.(MD)No.1916 of 2008 is allowed. The order dated 15.11.2006 on the file of the third respondent is also set aside. We direct the respondents 3 and 4 to refund the amount collected from the appellant.

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9. In the upshot, we allow the intra-Court appeal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Educational Officer,
Pudukottai Educational District,
Pudukottai.
2. The Additional Assistant Educational Officer,
Kunderandavar Koil (Sitting)
Keeranur,
Pudukottai District.
3. The District Treasury Officer,
Pudukottai District,
Pudukottai.
4. The Account General,
(Accounts & Entitlements) Tamilnadu,
Chennai.

+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 67690
+ 1 CC TO Mr.A.HAJA MOHIDEEN, ADVOCATE IN SR No. 67501

MM/AKV

TE/SKN-RSK/SAR-II : 18/08/2017 : 3P/7C

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