IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :11.06.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.21763 of 2015
and
WMP.No.38002 of 2017 and M.P.Nos.2 and 3 of 2015

P.Jegathambal ..Petitioner

vs

1.The Director of Treasury & Accounts,
Panagal Maligai,
Saidapet, Chennai - 600 018.
2.The Treasury Officer,
District Treasury, Salem,
Salem District.
3.The Hospital Superintendent,
Govt.Head Quarters Hospital,
Mettur Dam,
Salem District.
4.The Accountant General (A&E) Tamil Nadu,
Teynampet,
Chennai-600 018.
.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 2nd respondent in Che.Mu.T.K.No.2071/N3/2015 dated 13.03.2015 and quash the same and consequently direct the respondents to pay the family pension of the petitioner.

For Petitioner : Mr.C.K.M.Appaji
For Respondents 1 to 3 : Ms.A.Sri Jayanthi
Special Government Pleader
For R4 : No Appearance

O R D E R

The order of recovery dated 13.03.2015 is under challenge in this writ petition.

2. The husband of the writ petitioner was employed as Theatre Assistant in the third respondent hospital and passed away on 08.12.2006. The writ petitioner was sanctioned with the family pension and she was continuously receiving the family pension from the date of death of her husband.

3. The learned counsel appearing on behalf of the writ

petitioner states that suddenly, the respondents issued the impugned order of recovery in March 2015 stating that the excess payment of family pension was disbursed to the writ petitioner from January 2007 onwards. Further, it is contended that no show cause notice or opportunity was given to the writ petitioner before issuing the impugned order of recovery.

4. This court is of an opinion that any adverse order affecting the rights of an employee or family pensioner cannot be issued without providing an opportunity to the writ petitioner. Thus, the impugned order of recovery is in violation of the principles of natural justice. This apart, the excess payment was made not on account of any misrepresentation on the part of the writ petitioner. The family pension was granted as per the fixation done by the establishment of the respondents and there was no misrepresentation or otherwise on the part of the writ petitioner. This apart, the alleged excess amount had been paid with effect from January 2007 and the impugned order of recovery has been issued in the year 2015 after a lapse of about eight years. Thus, the recovery at this stage cannot be acceptable. This apart, the writ petitioner being a family pensioner cannot be directed to repay the entire family pension which is received from January 2007 onwards.

5. The Hon'ble Supreme Court in the case of State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, has held that excess payment if at all paid to an employee on account of the fixation made by the respondents, the same cannot be recovered after a lapse of many years. The relevant paragraph of the order is extracted hereunder.

> "12. 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."

6. However, it is made clear that the mistakes if any occurred in relation to fixation, the same shall be corrected. Thus, the respondents are at liberty to correct the mistakes in the fixation and pay the family pension in accordance with law in respect of the orders and rules in force. However, it is made clear that excess amount if any paid to the writ petitioner cannot be recovered.

7. The learned counsel for the writ petitioner made a submission that the revised family pension and other benefits are not paid to the writ petitioner on account of the pendency of the writ petition. However, all such fixation and refixation are to be done in accordance with the Government Orders and Rules in force and the respondents have to settle the family pension arrears to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this Order.

8. Thus, the impugned order passed by the second respondent in proceedings dated 13.03.2015 is quashed and the writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

stm/lok
To

1.The Director of Treasury & Accounts,
Panagal Maligai,
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2.The Treasury Officer,
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3.The Hospital Superintendent,
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4.The Accountant General (A&E) Tamil Nadu,
Teynampet,
Chennai-600 018.

+1 cc to Mr.C.K.M.Appaji Advocate sr 37135

W.P.No.21763 of 2015

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