IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.26424 of 2013 and
M.P.Nos.1 and 2 of 2013

Ms.Mullai Thamilselvan ... Petitioner

Vs

1. The Principal Accountant General (Pension),
   Teynampet, Chennai.

2. The Assistant Treasury Officer,
   Vedaraniam Sub Treasury Office,
   Vedaraniam Taluk,
   Nagapattinam District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with his proceedings in Na.Ka.No.1143/2013/A1 dated 10.09.2013 and quash the same and consequently direct the respondents to continue to pay the same monthly pension from July 2013 without any deducting towards recovery.

For Petitioner : Mrs.T.Aananthi

For Respondents : Mr.V.Vijayshankar (SC)

O R D E R

Heard Mrs.T.Aananthi, learned counsel for the petitioner and Mr.V.Vijayshankar, learned counsel appearing for the respondents.

2.The petitioner has approached this Court, seeking the following relief:-

> "To issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with his proceedings in Na.Ka.No.1143/2013/A1 dated 10.09.2013 and quash the same and consequently direct the respondent to continue to pay the same monthly pension from July

2013 without any deducting towards recovery."

3.The case of the petitioner is as follows:-

The petitioner was appointed temporarily as Secondary Grade Teacher on 30.08.1968. She worked in various places and retired from service on 31.08.2000. According to the petitioner, she had put in 30 years of service. On retirement, she is also been in receipt of pension.

4. From July 2013 onwards, it appears that the respondents started deducting Rs.3,000/- from the monthly pension payable to the petitioner. On enquiry, she was informed that there was an audit objection to the effect that the petitioner had been paid in excess amount than what was due to her. In view of the audit objection, the respondents started to recover the excess amount of Rs.20,268/-, from her monthly pension and the recovery had commenced from July 2013. Challenging the recovery order, the petitioner is before this Court .

5. According to the learned counsel for the petitioner, no notice was issued before the recovery was made from the monthly pension payable to the petitioner. Even otherwise, it is not open to the respondents to order recovery much after the retirement of the petitioner. In any event, the learned counsel would submit that such recovery was held to be illegal by various rulings of this Court as well as the Hon'ble Supreme Court of India. In the said circumstances, the petitioner prays for interference of this Court in the order of recovery.

6. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit. According to the counter affidavit, the qualifying service of the petitioner was wrongly calculated and therefore, she was granted excess pension than what was due to her. The factum of non-issuance of notice is admitted in the counter affidavit.

7. In view of the above facts, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. In the absence of any notice, the recovery, as made by the respondents is clearly illegal and cannot be sustained in law. Moreover, any excess payment which was not due to the misrepresentation on the part of the employee concerned, cannot be a subject matter of recovery, that too, 13 years after the retirement of the petitioner. Further, the reasons as set forth in the counter affidavit, cannot be acceptable at this distance of time and therefore, in all fours, the action of recovery by the respondents is questionable and the same has to be held as illegal and unsustainable.

8. For the above said reasons, the impugned order in Na.Ka.No.1143/2013/A1 dated 10.09.2013, is hereby quashed. The respondents are directed to refund of any amount which was recovered from the monthly pension payable to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Principal Accountant General (Pension),
   Teynampet, Chennai.

2. The Assistant Treasury Officer,
   Vedaraniam Sub Treasury Office,
   Vedaraniam Taluk,
   Nagapattinam District.

+1cc to Mrs.T.Aananthi, Advocate, S.R.No.44994
+1cc to Mr.V.Vijayshankar, Advocate, S.R.No.45174
+1cc to the Government Pleader, S.R.No.45357

W.P.No.26424 of 2013

CS/11/08/18