BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

| Date of Reserving Judgment 13.12.2017 | Date of Pronouncing Judgment 12.02.2018 |
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CORAM

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

W.P(MD).No.5303 of 2014
and
M.P(MD).No.1 of 2014

K.Krishnasamy ... Petitioner

Vs.

1. The Principal Accountant General
(Accounts and Entitlements),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

2. The Treasury Officer,
Dindigul District.
Dindigul. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent i.e. the Accountant General, Chennai relating to the order dated 13.03.2014 in his letter No.P13/II/Pt 10245/FC510687/13-14 and quash the same, and the Accountant General may be given liberty to re-fix the eligible Family Pension considering the reply given by the petitioner without resorting to any recovery.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Kumar
Additional Government Pleader

**O R D E R**

This Writ Petition has been filed to call for the records of the first respondent i.e. the Accountant General, Chennai relating to the order dated 13.03.2014 in his letter No.P13/II/Pt 10245/FC510687/13-14 and quash the same, and the Accountant General may be given liberty to re-fix the eligible Family Pension considering the reply given by the petitioner without resorting to any recovery.

2. The petitioner as a senior citizen aged about 89 years, is before this Court and submits that his daughter K.Kalpana while she was serving as a Special Grade Nurse in the Head Quarters Government Hospital, Dindigul, unfortunately died on 19.03.2002. As the petitioner was solely depend on his deceased daughter, he was sanctioned family pension as per the proceedings of the first respondent dated 25.09.2002 in P.P.O.No.FC/510687/MED.

3.By the impugned order dated 13.03.2014, the first respondent has stated that the petitioner is entitled to Normal Family Pension at the rate of Rs.2183/- from 20.03.2002 to 31.12.2006 and a sum of Rs.4935/- from the date of 01.01.2007 as per G.O.No.235. But inadvertently, he was sanctioned a family pension at the rate of Rs.3638/- from 20.03.2002 to 31.12.2006 and Rs.8223/- from 01.01.2007 to 19.03.2009. Therefore, the first respondent passed the impugned order has sought to recover the excess amount paid to the petitioner as family pension at the rate of Rs.3638/- from 20.03.2002 to 31.12.2006 and Rs.8223/- from 01.01.2007 to 19.03.2009 along with dearness allowance. Challenging the same, the present Writ petition has been filed by the petitioner. For which, the first and second respondent herein filed a detailed counter substantiating their stand and correctness of the recovery order and sought for dismissal of the same.

4. Heard the learned counsel for the petitioner and learned counsel for the respondents.

5. In this Writ petition, it is to be seen where the action of the respondent while ordering recovery of family pension which has been wrongly paid to the petitioner is in order and whether it is in consonance with the dictum laid down by the Honorable Supreme Court in various cases. The petitioner has submitted various Judgments in support of his claim which as follows:

a. (1994) 2 S.C.C.521
(Three member Bench of the Supreme Court)

b. (1995) 1.S.C.C.Supp 18

c. (2006) 1.M.L.J.695

d. (2006) 1.M.L.J.143 (D.8)

e. (2006) 2.M.L.J.185

f. W.P.No.21543 of 2004 dated 05.04.2007

g. (2007) W.L.R.1000



h. W.P.[M]No.3000 of 2008 dated 01.04.2008

i. W.P.[M]No.3303 of 2008 dated 09.04.2008

j. W.P.[MD]No.3268 of 2001 dated 07.08.2008

k. W.P.[MD]No.5031 of 2008 dated 13.10.2008

l. W.P.[MD]No.1096 of 2009 dated 10.02.2009

m. W.P.[MD]No.11051 of 2008 dated 12.02.2009

n. W.P.[MD]No.9819 of 2008 dated 04.03.2009

o. W.P.No.3940 of 2007, Principal Court, Chennai dated 11.06.2009.

p. W.P.[MD]No.12251 of 2008 dated 23.11.2010

q. W.P.[MD]No.7967 of 2008 dated 23.11.2010

r. W.P.No.3038 of 2011 dated 21.06.2011

s. W.P.[MD]No.8592 of 2011 dated 03.08.2011

t. (2013) 6 MLJ 736 SC (made clear that no recovery from excess payment)

u. W.P.[MD]No.3186 of 2010 dated 03.01.2014

v. W.P.[MD]No.2847 of 2011 dated 22.01.2014 (discussing and differentiating the decision reported in (2012) 8 SCC 117 with 1994 (2) SCC)

6. The learned counsel for the respondents would submit that the excess amount wrongly paid to the petitioner from the period 2002 to 2009 has to be recovered from him, as the same was paid due to the negligence and carelessness of the officials. He would also submits that the petitioner was also aware that he is not entitled to such payment of money and would recover the same. Hence, the excess amount received by the petitioner by the mistake of officials, has to be recovered.

7. The first respondent would also submit in paragraph 8 of the counter affidavit filed by him, which is extracted here under:

*"It is submitted that the Apex Court while dismissing the Appeal in the case of Chandi Prasad Uniyal and others Vs State of Utharkhand and other (Civil Appeal No.5899 of 2012/SLP(c) No.30858/2011) had observed as follows:*

*"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment, nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, maybe due to various reasons like negligence, carelessness, collusion, favoritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment"*

8. This Court is not inclined to accept the arguments regarding the above Judgment relied on by the learned counsel for the respondents. Admittedly, the petitioner was sanctioned with the Family Pension for a sum of Rs.3638/- authorized by the respondents with effect from 20.03.2002 owing to the death of the petitioner's daughter on 19.03.2002, at the time the petitioner would have been 68 years old and now standing before this Court as aged senior citizen of 89 years old. The petitioner only sought for family pension, being solely dependent on his daughter who died on 19.03.2002 while in the Government service.

9. It was the first respondent who sanctioned pension amount on 25.09.2002 and continued to pay a sum of Rs.3638/- from 20.03.2002 to 31.12.2006 and Rs.8223/- from 01.01.2007 to 19.03.2009. Only in the year 2014, the respondent all of a sudden deducted the amount after a long time that they have fixed his family pension in excess and immediately they issued a show case notice to the petitioner on 10.01.2014 the petitioner was sanctioned enhanced rates of family pension from 20.03.2002 to 19.03.2009 inadvertently and asking as to why the excess amount paid should not be recovered from him in installments. Further he was requested to send his representation through the Departmental Officer with proper justification and supporting Government orders/clarificatory letter for consideration and to take further

action. For which, the petitioner had given his explanation on 29.01.2014 stating that it could not be agreeable as it has been raised after a lapse of 12 years and also it is very difficult to him to go and search the past evidences in support of his claim. Thereafter, the impugned order dated 13.03.2014 came to be passed by the first respondent directing the second respondent to recover the excess family pension amount paid to the petitioner.

10. The learned counsel for the petitioner though relied on by the various Judgments, it would be appropriate for this Court to refer the Judgment reiterated in the case of State of Punjab and Ors Vs Rafiq Masih (White Washer) by the Honourable Supreme Court of India, wherein it has been clearly held in Paragraph 12 of the said Judgment which 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 wronglyfully 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."

11. It has to be seen whether the Judgment relied on by the petitioner's counsel can be applied to the present case, as all the cases referred relates to either serving employees or retired employees. In fact, the Judgment reiterated in the case of State of Punjab and Ors Vs Rafiq Masih (White Washer) by the Honourable Supreme Court of India, is pertaining to retired employees or the employees serving, while the case on hand pertains to a Senior Citizen who has been sanctioned family pension on account of demise of the petitioner's daughter on 19.03.2002 while she was in service and the petitioner who is the only surviving dependent of his deceased daughter.

12. Considering the submissions made by the learned counsel on both sides and on perusing the materials available on record, this Court is of the view that recovery which is sought to be made in relation to alleged excess payment of pension made during 20.03.2002 to 31.12.2006 and 01.01.2007 to 19.03.2009 and such recovery was sought to be made from the person who is at the time of filing the Writ petition aged about 85 years old and now before this Court as aged Senior Person of 89 years old.

13. The present case though pertaining to the petitioner is squarely be applicable and concluded with the principles laid down on the Supreme Court Judgment has decided in the above mentioned case pertain to the retired employees or the employees in service, the impugned order passed by the first respondent on 13.03.2014 is not sustainable in law for more than one reason. Firstly, It is not a case that the petitioner has misrepresented before the first respondent to receive the family pension. Second, the respondents have also failed deliberately to take timely action for recovering the alleged excess payment when there is no fault on the petitioner that too the petitioner being a senior citizen who is 85 years old when the order was passed by the respondent. The respondents ought not to have issued such recovery order that too when the excess payment made only on the part of the mistakes committed by the officials of the respondents.

14. Therefore, this Court is of the view that the impugned order passed by the first respondent has to be quashed. Apart from that, imposing cost to the respondent to be paid to the petitioner as he is 89 years old person who has been made to run pillar to post to get his family pension.

15. Accordingly, this Writ petition is allowed and the order passed by the first respondent dated 13.03.2014 is quashed directing the first respondent to re-fix the eligible family pension to the petitioner. The first respondent is also directed to pay arrears of family pension to the petitioner if any, along with interest up to till date from when the arrears becomes due. Further the respondent is directed to pay a sum of Rs.10,000/- as

cost to the petitioner, considering the age of the petitioner who is now 89 years old. The entire directions have to be completed within a period of 3 weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.



Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Accountant General
(Accounts and Entitlements),
Tamil Nadu,
361, Anna Salai,
Chennai - 600 018.

2. The Treasury Officer,
Dindigul District.
Dindigul.

Raja/ps
AE/KK/SAR1/26.03.2018/7P/3C

**Order in**

W.P(MD).No.5303 of 2014
and
M.P(MD).No.1 of 2014
12.02.2018