



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 9453 of 2011

and

M.P. (MD) No. 1 of 2011

G.Pushpa Rani

... Petitioner

Vs.

The Branch Manager,
Indian Bank,
Tirunagar Branch,
Tirunagar, Madurai 625 005.

... Respondent

Prayer : Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the respondent relating to Ref/HO/CSC/RTI/1150/2011-2012/1335, dated 06.07.2011 and quash the portion relating to recovery of Rs.2,500/- per month from February, 2011 and consequently direct the respondent not to effect any recovery which is allegedly paid in excess and refund the amount recovered from February, 2011 within a specified time frame that may be fixed by this Court.

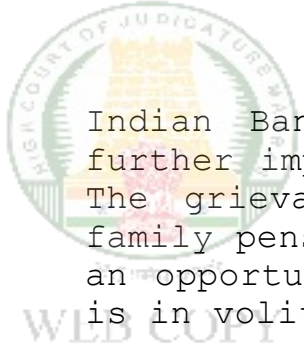
For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.Pala Ramasamy

O R D E R

The order of recovery issued against the writ petitioner in proceedings dated 06.07.2011, is under challenge in this writ petition.

2.The husband of the writ petitioner Late.Sri.V.Ganapathy, was serving in the Indian Army as Subedar / Major from 31.03.1967 to 24.08.1996. The husband of the writ petitioner passed away on 24.08.1996, while he was in Army Service, due to sudden heart attack. The writ petitioner was receiving family pension through Indian Bank Branch at Tirunagar right from 23.04.1997, as per P.P.O.No.F/NA/1640/1997.

3.The learned counsel appearing on behalf of the writ petitioner states that without any notice or intimation, the



Indian Bank Branch, Tirunagar, reduced the family pension and further imposed recovery stating that an excess payment was made. The grievance of the writ petitioner is that the revision of family pension and recovery was imposed *suo motu* without providing an opportunity to the writ petitioner. Thus, the order impugned is in violation of principles of natural justice.

4. The learned counsel appearing on behalf of the respondent is unable to dispute the fact that no notice was issued before passing the impugned order. However, the learned counsel for the respondent states that an error was found in respect of fixation of family pension and the revision of family pension was effected, to correct the erroneous fixation done in the case of writ petitioner and the recovery is imposed to recover the excess payment.

5. This Court is of the opinion that the authorities competent are empowered to correct the errors in respect of the revision of pay. However, the excess payment, if any made cannot be recovered more specifically from the family pensioners. Thus, the respondent is at liberty to correct the errors and fix the correct family pension as per the rules in force. However, if any excess payment is made, which cannot be recovered from the writ petitioner. In this regard, the Honourable Supreme Court of India, in the case of ***State of Punjab and others vs. Rafiq Masih*** reported in **2015 4 SCC 344** settled the legal principles in Paragraph 18 of the Judgment, which is extracted hereunder:

18. 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 hereinabove we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to the Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees, who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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. Sub-Clause (II) of paragraph 18 states that the recovery from the retired employees are impermissible. In the present case on hand, there was no revision on the part of the writ petitioner. The revision of family pension was done at the instance of establishment of the respondent. Thus, the writ petitioner cannot be faulted with. Under these circumstances, the order impugned passed by the respondent in Ref/HO/CSC/RTI/1150/2011-2012/1335, dated 06.07.2011 is quashed and the respondent is directed to re-fix the family pension of the writ petitioner after issuing show cause notice and by receiving explanation / objection, if any from the writ petitioner. However, it is made clear that no recovery can be imposed in respect of the excess payment already made to the writ petitioner.

7. Accordingly, this Writ Petition stands allowed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (Crl side)

/True Copy/

Sub Assistant Registrar

To

The Branch Manager,
Indian Bank,
Tirunagar Branch,
Tirunagar, Madurai 625 005.

+ 1 cc TO Mr.S.Visvalingam , Advocate in SR No. 43406
+ 1 cc TO Mr.Pala Ramasamy , Advocate in SR No. 43505

ia/mm

AE/JC/SAR3/21.03.2018/3P/4C

W.P. (MD) No. 9453 of 2011
23.01.2018