

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1503 of 2018
and WP.MP.No.1913 of 2018

S.Kuppammal

... Petitioner

Vs

The Assistant Director,
Municipal Pension Disbursing Section,
Directorate of Local Fund Audit,
Combined Finance Officer Campus,
4th Floor, Nandanam,
Chennai 600 035.

.... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the impugned orders passed by the respondent in முழுஎண் 21241/நடுவ(6)/2017, dated 01.12.2017 and consequently, direct the respondent to refund the attached amount from the pension.

For Petitioner : Mr.A.R.Nixon

For Respondent : Ms.P.Rajalakshmi, AGP

O R D E R

The order of recovery dated 01.12.2017 issued by the respondent is under challenge in the present Writ Petition.

2. The learned counsel for the Writ Petitioner states that the petitioner is a family pensioner aged about 82 years old. The husband of the Writ Petitioner was employed as Municipal Manager and died on 05.08.1984, while he was in service. Thereafter, the Writ Petitioner is receiving family pension continuously.

3. The family pension was revised in favour of the the Writ Petitioner, pursuant to the order of this Court, dated 31.03.2006 in W.P.No.8904 of 2006. Based on the Court order, the Government also issued orders granting revision of pay.

Accordingly, the family pension was revised and the Writ Petitioner is receiving family pension on the basis of the Government Order in force.

4. Such being the case, the impugned order of recovery has been issued by the respondent in proceedings dated 01.11.2017 stating that excess amount of family pension has been paid to the Writ Petitioner. Thus, the said amount is sought to be recovered by way of monthly installments.

5. The learned counsel for the petitioner states that no notice or opportunity was given to the Writ Petitioner. This apart, the Writ Petitioner is a family pensioner aged about 82 years old and therefore, no recovery can be effected.

6. This Court is of the opinion that any order affecting the pensionary benefits and the right of the family pensioner, has to be issued only after giving opportunity to the concerned party. Thus, the impugned order is passed in violation of the principles of natural justice. This apart, the revision of pay has been made pursuant to the order passed by this Court, which was implemented by the Government by issuance of G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009. Thus, even if any excess payment was made already, the amount cannot be recovered from the family pensioners, in view of the legally settled principle of the Apex Court in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which are 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 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."

7. As per the judgment cited supra, the recovery of excess payment from the pensioners / family pensioners is impermissible.

8. The learned Additional Government Pleader appearing for the respondent made a submission that the Writ Petitioner has given an undertaking in respect of the revision of pay effected. Therefore, the respondent is entitled for recovery of amount of excess payment.

9. This Court is of the opinion that the respondent has fixed the pay, pursuant to the order of this Court, which was implemented by the Government in G.O.Ms.No.235, dated 01.06.2009. Thus, even if there is any wrong calculation, the excess payment made cannot be recovered from the family pensioner. However, it is made clear that the correct scale of pay and the family pension can be re-fixed. There is no impediment for the authorities to revise the scale of pay as well as the family pension of the Writ Petitioner. But the excess payment already made cannot be recovered.

10. In view of the above facts, this Court is of the opinion that the order impugned in the present Writ Petition deserves to be quashed. Accordingly, the impugned order passed by the respondents in proceedings in முழு.எண் 21241.நடுவ (6)/2017, dated 01.12.2017 is quashed. The respondent is directed to correct the errors, if any, that had occurred in the revision of family pension and pay correct family pension as applicable to the Writ Petitioner, by issuing show cause notice to the petitioner. It is made clear that the excess payment made in favour of the Writ Petitioner cannot be recovered.

11. Accordingly, the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

pvs

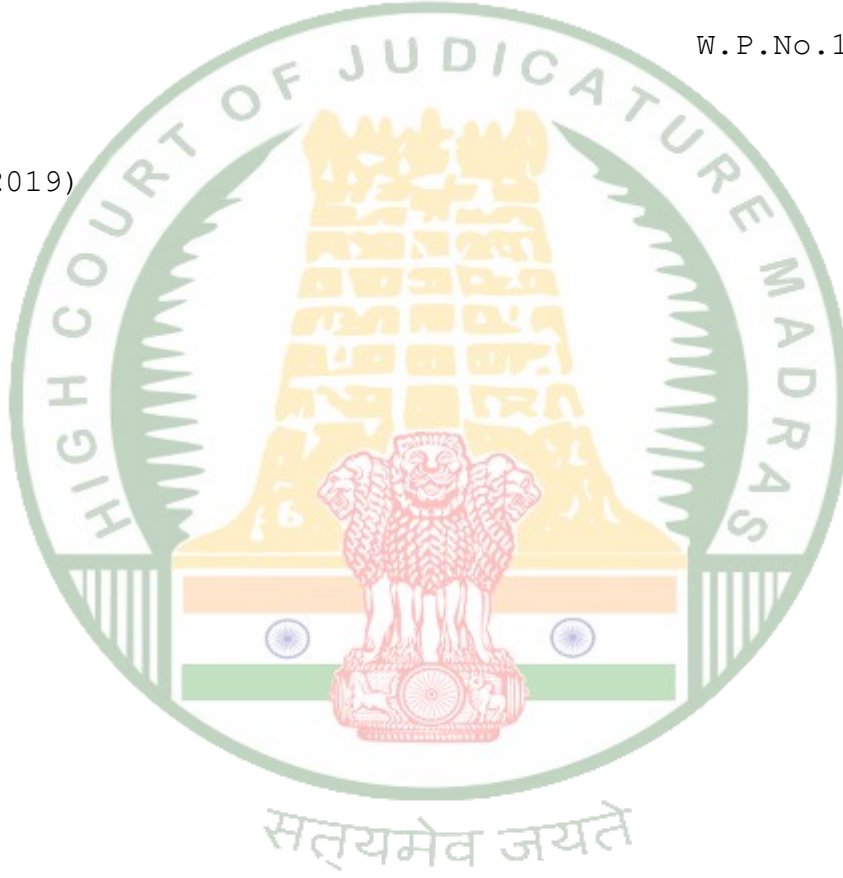
To

The Assistant Director,
Municipal Pension Disbursing Section,
Directorate of Local Fund Audit,
Combined Finance Officer Campus,
4th Floor, Nandanam,
Chennai 600 035.

+lcc to Mr.A.R.Nixon, Advocate, S.R.No. 10025
+lcc to the Government Pleader, S.R.No. 10821

W.P.No.1503 of 2018

VBA (CO)
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