

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 19.06.2019****CORAM:****THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM****W.P. (MD) No. 23530 of 2015****and****M.P. (MD) No. 2 of 2015**

WEB COPY

P. Prabhavathi

... Petitioner

vs.

1. The District Collector
Madurai District, Madurai

2. The Treasury Officer
District Treasury, Madurai-20

3. The Assistant Treasury Officer
Sub Treasury, Thirumangalam
Madurai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the entire records pertaining to the impugned order of the 3rd respondent in Na.Ka.No.1125/2015/913 dated 09.11.2015 and quash the same as illegal and consequently direct the third respondent to remit back the amount deducted from the petitioner family pension forthwith in petitioner's bank account.

For Petitioner : Mr.R.Mohamed Rajapdheen

For Respondents: Mr.S.Dhayalan

Government Advocate

O R D E R

The writ petitioner is a family pensioner and the present writ petition is filed challenging the impugned order of recovery passed by the third respondent in proceedings dated 09.11.2015.

2. The husband of the writ petitioner Sri.R.Paraman was employed as Village Administrative Officer and he died on 25.11.2002. The fixation of pay as well as the family pension was done by the respondents as per the Government Orders in force. While so, the impugned order of recovery was issued based on the audit objections raised by the Accountant General of Tamil Nadu.

3. The learned counsel for the writ petitioner states that no opportunity was given to the writ petitioner before issuing the impugned order of recovery. This apart, the impugned order of recovery was passed in order to recover the excess amount from the family pension of the writ petitioner. The said recovery would affect the livelihood of the writ petitioner as she is receiving a meager amount of family pension.



4. This Court is of the considered opinion that any order affecting the service rights or monetary benefits of an employee / family pensioner is to be issued only after providing an opportunity to the employee / family pensioner concerned. In the present case on hand, no such opportunity was given to the writ petitioner and therefore, the order impugned is in violation of the principles of natural justice. This apart, recovery of excess amount from the family pensioners would undoubtedly affect their livelihood as during old age, they require money for medical expenses and other expenditures.

5. The legal principles, in the matter of recovery of excess payment from the retired employee, are settled by the Honourable Supreme Court of India in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, reported in (2015) 4 SCC 334. The relevant paragraphs 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."

6. The fact remains that the writ petitioner is a family pensioner and there was no misrepresentation or otherwise on the



part of the writ petitioner regarding the fixation of pay or payment of excess amount. However, the authorities competent are empowered to correct the scale of pay as well as the revision of pension and pay the correct pension, as applicable to the writ petitioner, in accordance with the Pay Rules and as per the Government Orders in force.

7. Under these circumstances, the writ petition is allowed and the impugned order passed by the third respondent in proceedings dated 09.11.2015, is quashed. The respondents are directed to fix the correct revision of pension and family pension in accordance with the Government Orders in force and accordingly, pay the family pension to the writ petitioner as per the Pay Rules in force. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The District Collector,
Madurai District, Madurai.
2. The Treasury Officer,
District Treasury, Madurai-20.
3. The Assistant Treasury Officer,
Sub Treasury, Thirumangalam,
Madurai District.

+1 CC to M/s.SPL GP (SR-70253[F] dated 20/06/2019)

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-70421[F]
dated 21/06/2019)

KRK

W.P. (MD) No.23530 of 2015
and
M.P. (MD) No.2 of 2015
19.06.2019