



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.17954 of 2015

and

M.P. (MD) No.1 of 2015

R.Helan Shanthini

... Petitioner

-Vs-

The Assistant Treasury Officer,  
Tirumangalam 625 706,  
Madurai District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records respondent made in Rc.No.212/15, dated 18.03.2015 and quash the same and direct the respondent to refund the amount already recovered from the petitioner's family pension.

For Petitioner : Mr.B.Alagarsamy

For Respondent : Mr.M.Jeyakumar  
Additional Government Pleader

### ORDER

The order of recovery, dated 18.03.2015, is under challenge in the present writ petition.

2.The writ petitioner is a family pensioner. The family pension was fixed by the respondent as per the pay rules and Government Orders in force. However, the audit objections was raised subsequently, stating that the excess family pension was paid to the writ petitioner. Thus, the impugned order of recovery was issued by the Assistant Treasury Officer.

3.This Court is of the considered opinion that any order affecting the monetary benefits of the family pensioner cannot be issued without providing an opportunity. The learned Additional Government Pleader appearing on behalf of the respondent is unable to establish, a show cause notice or opportunity was provided to the writ petitioner before issuing the impugned order. Thus, the order



impugned is in violation of the principles of natural justice.

4. Even in case of excess payment, the same cannot be recovered from the family pensioner, after a lapse of many years. However, the competent authorities are empowered to fix the family pension in accordance with the Government Orders in force. In other words, the mistakes, if any occurred can be rectified by the competent authorities by correcting the mistake and to pay the applicable family pension. Contrarily, the excess payment already paid, if any cannot be recovered from the family pensioner. In this regard, the principles are settled by the Hon'ble Supreme Court of India in the case of State of Punjab Vs. Rafiq Masih reported in (2015) 4 SCC 334.

5. In view of the legal principles settled by the Hon'ble Supreme Court of India, the excess amount, even if any paid erroneously, cannot be recovered from the family pension. This being the factum, the impugned order passed by the respondent in proceeding in Rc.No.212/15, dated 18.03.2015, is quashed. The respondent is directed to fix the correct family pension with reference to the Government Orders in force and accordingly, pay the family pension regularly to the writ petitioner.

6. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To  
The Assistant Treasury Officer,  
Tirumangalam 625 706, Madurai District.

+1 CC to M/s.B.ALAGARSAMY, Advocate ( SR-78506[F] dated 30/07/2019 )

+1 CC to M/s.SPL GP ( SR-78983[F] dated 31/07/2019 )

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