

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.24715 of 2005

R.Saroja

.. Petitioner

-vs-

1.The Government of Tamilnadu,
rep. by its Secretary,
Finance Department,
Fort St. George,
Chennai-600 009.

2.The Principal Accountant General,
No.361, Anna Salai,
Teynampet,
Chennai-600 018.

3.The Assistant General Manager,
State Bank of India,
Anna Nagar West Branch,
Plot No.4611 (Y-211), 2nd Avenue,
Anna Nagar (West),
Chennai-600 040.

4.The Chief Engineer (H&RW),
Chepauk, Chennai-600 005.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the third respondent in his proceeding dated 10.03.2005 and quash the same and consequently direct the respondents herein to pay family pension of Rs.4,290/- p.m. along with other benefits with effect from March 2005 continuously until her death.

For Petitioner : Mr.K.Raja

For respondents: Mr.K.Magesh,
Special Government Pleader
for R1 & R4

No appearance for R2 & R3

ORDER

The petitioner, W/o. S.R.Naidu, who is receiving family pension at Rs.4290/- p.m. with effect from 24.04.2001 as per the proceedings issued by the Chief Engineer (H&RW), Chennai, dated 11.04.2000, has filed this Writ Petition in the year 2005 challenging the correctness of the order of recovery dated 10.03.2005 issued by the 3rd respondent and seeking a direction to the respondents to pay the family pension at Rs.4,290/- p.m. along with other benefits with effect from March 2005.

2.Learned counsel appearing for the petitioner submitted that the petitioner's husband, while serving as Superintending Engineer Group 'C' Post, Highways Department, Chennai, attained the age of superannuation on 07.08.1963. Thereafter, initially, he was paid with monthly pension of Rs.453/- p.m. from 08.08.1963 through PPO No.A-55511. While he has been receiving monthly pension regularly during his life time, G.O.Ms.No.200 Finance (PC) Department, dated 18.05.1999 came to be issued revising the pension. Therefore, he made a representation to the 4th respondent herein, namely, Chief Engineer (H&RW), Chennai on 28.06.1999 for revising his pension. Accordingly, the 4th respondent increased his pension at Rs.6,717/- p.m. and the family pension was also fixed at Rs.4290/- p.m. on 11.04.2000. Finally, as per G.O.Ms.No.200 dated 18.05.1999, the petitioner's husband received pension of Rs.6,717/- p.m. as per the proceedings dated 23.05.2000 of the District Treasury Officer, Coimbatore, wherein it has been mentioned that the family pension has been fixed at Rs.4,290/- p.m. and the revision of pension was given to the petitioner's husband at Rs.6,717/- with effect from 01.04.1999.

3.Learned counsel for the petitioner further submitted that sadly, the husband of the petitioner died on 23.04.2001. Hence, the petitioner was given family pension at Rs.4,290/- p.m. with effect from 24.04.2001 vide Proceedings of the 4th respondent dated 11.04.2002 and the petitioner was receiving the said family pension with dearness allowance right from 24.04.2001 to 28.02.2005. While so, the Assistant General Manager, State Bank of India, Anna Nagar West Branch, Chennai, the 3rd respondent herein, passed the impugned order dated 10.03.2005 stating that an excess amount of Rs.4600/- had been paid every month as family pension from 01.12.2002. Therefore, the pension from March 2005 onwards would be paid as indicated in the Credit Report with a direction to the petitioner to remit the excess amount of Rs.1,95,937/- paid to him as family pension from 01.12.2002 to 28.02.2005. The said impugned order calling upon the petitioner to pay back the said amount is in violation of the ratio laid down by the Apex Court in the case of State of Punjab and others vs. Rafiq Masih etc., which is called famously

as White Washers Case reported in CDJ 2014 SC 1054 wherein it has been held that recovery from retired employees who are due to retire within one year of the order of recovery is impermissible in law. Moreover, the impugned order was passed against the petitioner on the premise that an excess amount of Rs.1,95,937/- was paid to her, without giving any opportunity of hearing to her and no notice was issued to her calling upon her explanation and no enquiry whatsoever was also held. Hence, the impugned order of recovery passed behind the petitioner is liable to be set aside.

4.A detailed counter affidavit has been filed by respondents 1 and 4.

5.Learned Special Government Pleader appearing for respondents 1 and 4 would submit that after the death of the petitioner's husband on 23.04.2001, the petitioner was given the family pension at Rs.4,290/- with effect from 24.04.2001 as per the proceedings issued by the 4th respondent. When the family pension is given by the Government to the spouse of the deceased/petitioner for which the Government has issued various orders from time to time, the Tamil Nadu Pension Rules were introduced with effect from 01.04.1964 which states that the family pension in case of legal heir/spouse of the deceased pensioner, who retired before 01.04.1964, are eligible only for Flat Rate of Family Pension as per G.O.Ms.No.748, Finance (Pension) Department, dated 26.5.1979. Therefore, the petitioner has no right to claim family pension with reference to the orders issued in G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.5.1999 revising the pension for pre 1996 pensioners.

6.Learned Special Government Pleader further submitted that since the State Bank of India, Anna Nagar West Branch is the disbursing authority of the Family Pension, based on the audit objection raised by the Accountant General, the Chief Engineer (General), Highways has cancelled the authorisation made by him for family pension and the Pension Payment Officer, Chennai has passed orders for effecting recovery of excess payment and accordingly, the State Bank of India, Anna Nagar West Branch has effected recovery from the family pension, which is in order. Hence, the objection raised by the petitioner in the writ petition is not tenable. Moreover, the petitioner has not reported the fact of death of her husband to the Chief Engineer (General), Highways Department, even though the revision of pension has been recommended by the office of the Chief Engineer as requested by the pensioner Late S.R.Naidu that clearly shows that there is a lack of response on the part of the petitioner only with a motivation to gain the benefit of inadmissible family pension inadvertently authorised by the Chief Engineer (General), Highways Department, without taking

note of the fact that the family pension in case of the employees retiring prior to 1.4.1964 before the introduction of the Tamil Nadu Pension Rules are eligible for flat rate of family pension only.

7. Now the short issue raised in the instant petition is whether the respondents are right in passing the order of recovery against the petitioner, who is the wife of late S.R.Naidu. When the petitioner's husband after retirement from service on 07.08.1963, received monthly pension of Rs.453/- per month from 08.08.1963 through P.P.O. No.A-55511. While so, G.O. Ms. No.200 Finance (PC) Department, dated 18.05.1999 came to be issued revising the pension. On the basis of the said G.O., the fourth respondent revised the pension of Rs.6,717/- and accordingly, the family pension was fixed at Rs.4,290/- per month on 11.04.2000. By applying the said G.O, the petitioner's husband received a sum of Rs.6,717/- per month towards pension as per Proceedings dated 23.05.2000 issued by the District Treasury Officer, Coimbatore. After the death of her husband on 23.04.2001, the petitioner was given family pension at Rs.4,290/- per month with effect from 24.04.2001 vide Proceedings dated 11.04.2002 issued by the fourth respondent.

8. The grievance of the petitioner is that when her husband died on 23.04.2001, she made a representation for receipt of family pension. But the fourth respondent, without due verification, has fixed the family pension at Rs.1,334/- holding that the benefit of fixation of pension at Rs.4,290/- is not admissible. Therefore, there is no mis-representation from the side of the petitioner. Secondly, the respondents, after noticing the fact that the petitioner was paid with excess pension, should have issued a notice before ordering recovery of Rs.1,95,937/-, when there was no mistake or fault on the part of the petitioner.

9. A perusal of the record shows that there was a mistake on the part of the respondents. They should have issued a notice calling upon the petitioner to give explanation as to why the excess amount paid by the respondents should not be recovered. Since no notice was served upon the petitioner before issuing recovery order and that there was no mis-representation from the petitioner, this Court has no hesitation to quash the impugned order of recovery.

10. Moreover, the Apex Court in its judgment dated 18.12.2014 in Civil Appeal No.11527 of 2014 etc. batch in the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc. held that recovery from retired employees who are due to retire within one year of the order of recovery is impermissible in law. It is pertinent to extract the relevant portion as under:

'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.'

11.A perusal of the above judgment clearly shows that the respondents cannot pass the above order of recovery against the petitioner, who is a widow and whose husband died on 23.04.2001 as a pensioner. Hence, the impugned proceeding is quashed. Accordingly, the writ petition stands allowed directing the respondents to re-fix the pension to the petitioner within a period of two weeks from the date of receipt of a copy of this order. The respondents are further directed not to delay the process as the petitioner is a poor widow and a senior citizen. No costs.

Sd/-
Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Secretary,
Government of Tamilnadu,
Finance Department, Fort St. George,
Chennai-600 009.

2.The Principal Accountant General,
No.361, Anna Salai,
Teynampet,
Chennai-600 018.

3.The Assistant General Manager,
State Bank of India,
Anna Nagar West Branch,
Plot No.4611 (Y-211), 2nd Avenue,
Anna Nagar (West),Chennai-600 040.

4.The Chief Engineer (H&RW),
Chepauk, Chennai-600 005.

+1cc to Mr.K.Raja, Advocate SR.23560
+1cc to the Government Pleader SR.24320

W.P. No.24715 of 2005

VGII(CO)
CB(18/06/2020)



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