

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 30898 OF 2013
AND
M.P. NOS. 1 OF 2013 & 1 OF 2014

M.Parvathy

.. Petitioner

- Vs -

1. The Assistant Treasury Officer
O/o the Sub Treasury
Tambaram.
2. The Accountant General (Civil & Audit)
182, Anna Salai, Teynampet
Chennai - 18.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records connected with the impugned order passed in Proc. Na.Ka.10/UkaA/2013 dated 18.7.13 of the 1st respondent and quash the same and direct the respondents to refund the recovery amount to the petitioner.

For Petitioner : Mr. G.Elanchezhian

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that her husband was employed as Leading Fireman at Guindy Fire Station. The petitioner's husband, while in service, submitted application for voluntary retirement from service to the respondent on 31.5.97, which was accepted and the petitioner's husband was permitted to retire from service w.e.f. 31.5.97. However, the retirement benefits of the petitioner's husband was not settled. In the meanwhile, the petitioner's husband breathed his last on 13.9.97. After obtaining legal heir certificate, the petitioner submitted application for providing the pension and also for the terminal benefits of her deceased husband. However, the

authorities sanctioned only 50% of the family pension and not the full family pension and that the terminal benefits of the petitioner's husband has also not been settled till date.

2. In this regard, the petitioner approached the authorities for grant of full family pension and payment of other terminal benefits, for which she was orally informed that there was a rival claim and, therefore, the full pension cannot be granted. In this backdrop, the petitioner filed a civil suit before the District Munsif Court, Tambaram and obtained a judgment and decree on 29.4.04 declaring the petitioner to be the legal heir of the deceased and entitled to all service benefits of the deceased. The judgment and decree has since become final as no appeal was made against the said order. In spite of the petitioner submitting the copy of the decree, the authorities have not settled all the benefits of the deceased to the petitioner till date and no order has been passed on the representation submitted by the petitioner. Due to the above inaction on the part of the authorities, the petitioner filed W.P. No.21106/09 before this Court with a prayer to direct the authorities to consider the representation and pass orders on the same. The said petition came to be dismissed on the basis of the undertaking of the Director of Fire Service that acting on the decree, already order has been passed on the representation of the petitioner on 15.7.04 directing to pay all the terminal benefits of the deceased to the petitioner. In spite of the said undertaking, since no order was passed regarding payment of terminal benefits, contempt petition was filed in Contempt Petition No.320/2012, in which, this Court recording the stand of the respondents therein that already proposal has been initiated to the Government for relaxation under the Pension Rules and that the matter is pending consideration of the Government. Recording the same, the contempt petition was closed. Thereafter also, as the petitioner was not paid the full pension, another round of litigation in W.P. No.31920/12 and a further contempt was also filed for wilful disobedience of the orders of this Court. However, it is the stand of the authorities that the matter is still with the Government. While the matter stood thus, the 1st respondent, without issuing any notice and without giving opportunity to the petitioner, has passed the impugned recovery order to recover a particular sum every month from the pension paid to the petitioner. Since no order has been passed on the petitioner's representation and recovery order has also been passed on the 50% family pension being received by the petitioner, the present petition has been filed.

3. Learned counsel appearing for the petitioner submits that the impugned order has been passed in total violation of principles of natural justice, as no opportunity was given to the petitioner before passing the order of recovery. Further, it is the submission on behalf of the petitioner that the matter is pending with the Government for over a decade and without obtaining any orders on the same, passing the order of recovery from the 50% family pension paid to the petitioner totally puts the petitioner's livelihood at stake. It is therefore prayed that the impugned order deserves to be set aside.

4. On the above contention this Court heard the learned Special Government Pleader appearing for the respondents, who fairly conceded that without affording an opportunity to the petitioner, the impugned order has been passed and, therefore, the said order is wholly unsustainable. This Court also perused the materials available on record.

5. The facts in issue are not in dispute, so also the order of recovery passed by the respondents. A perusal of the records reveal that the impugned order of recovery has been passed without issuing any notice to the petitioner and affording an opportunity of hearing to the petitioner. The basic requirement of an opportunity of hearing to the petitioner is sine qua non to hold that there are no violation of principles of natural justice. In the present case, neither any notice nor an opportunity of hearing was afforded to the petitioner before passing the impugned order and this is a glaring violation of principles of natural justice and on this ground, the impugned order is liable to be set aside.

6. For the reasons aforesaid, this writ petition is allowed setting aside the order impugned passed by the 1st respondent. However, liberty is granted to the 1st respondent to proceed in accordance with law, if so advised. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

सत्यमेव जयते
Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Assistant Treasury Officer
O/o the Sub Treasury
Tambaram.
2. The Accountant General (Civil & Audit)
182, Anna Salai, Teynampet
Chennai - 18.

+1cc to Mr.G.Elanchezhiyan, Advocate SR.24928

W.P. NO. 30898 OF 2013

VD(CO)
CB(21/09/2020)



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