



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.08.2020

DELIVERED ON : 08.09.2020

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CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.18629 of 2013

R. Ushabai

... Petitioner

Vs.

The Commissioner,
Madurai Corporation,
Madurai - 2.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent herein to pay Family Pension and other emoluments payable to the petitioner at the revised rate with effect from 16.09.2004, within the time fixed by this Court.

For petitioner : Mr. R. Aravindan

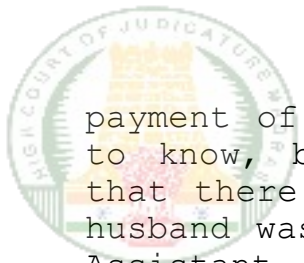
For Respondent : Mr.S. Shanmugaselvam
Standing Counsel

ORDER

This Writ Petition has been filed for issuing a direction to the respondent herein to pay Family Pension and other emoluments payable to the petitioner at the revised rate with effect from 16.09.2004, within the time frame to be fixed by this Court.

2. The factual service matrix of the petitioner's husband that required for this case are as follows:

The petitioner's husband viz., R. Mohandass had been appointed as a Public Work Supervisor in the respondent Corporation in the year 1974. At the time of his retirement from service, on 30.09.2006, he had been promoted as a Junior Engineer, Grade I (Selection Grade). He had attained superannuation, on 30.09.2006, after having served in the respondent Corporation for more than 32 years. Thereafter, on 04.09.2007, the petitioner's husband had died due to a heart attack, without receiving any pension from the respondent corporation. When the petitioner applied for the



payment of family pension and for other retrial benefits, she came to know, by the proceedings of the respondent, dated 07.10.2009, that there was an excess payment of salary, while the petitioner's husband was in service. Due to the audit objections raised to the Assistant Director, Local Fund Audit, Madurai Corporation, the amount of Rs.2,48,409/- had been recovered from the retrial benefits of the petitioner's husband. She filed a Writ Petition in W.P(MD). No. 13098 of 2010 before this Court. Considering the law laid down at the relevant point of time to the effect that recovery from the retirement benefits is not permissible, this Court, by an order dated 30.11.2010, disposed of the Writ Petition directing the respondents therein to refund the recovered amount without interest within a period of six weeks and the same was confirmed in W.A(MD). No.1184 of 2011, dated 05.01.2012, which was filed by the respondent herein.

3. Now, the petitioner has come forward with this petition praying to refix the family pension payable to her by taking the original salary which was found to be incorrect by the audit objection.

4. The learned counsel appearing for the petitioner would contend that the respondent has not chosen to refix the family pension payable to the family of the deceased officer at the revised rate and also other benefits, though she got favourable order in the writ petition as well as in the Writ Appeal. Therefore, the petitioner has submitted a representation dated 25.06.2010 to the respondent for refixation of pension and other benefits as per the revised scale of pay paid to her deceased husband with effect from 16.09.2004. However, the respondent has not considered the said representation. Again, on 27.04.2012 the petitioner has submitted another representation to the respondent for taking necessary action and the same was not considered by the respondent. The respondent herein is duty bound to pay family pension and other emoluments at the revised rate with effect from 16.09.2004 and also Special Provident Fund Rs.5,000/- (Government Contribution amount) and event the fifth pay commission arrears, have not been paid to the petitioner in spite of her representation dated on 28.07.2013.

5. The learned Standing Counsel appearing for the respondent would submit that the recovered amount has already been refunded as per the order of this Court made in W.P(MD).No. 13098 of 2010, dated 30.11.2010. The present claim of the petitioner cannot be considered, as there is no merit in the same.

6. I have heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondent.

7. Though the excess salary of Rs.2,48,409/- was stated to be paid on the basis of wrong calculation, this Court has ordered to refund



the recovered amount, in the earlier Writ Petition filed by the petitioner in W.P(MD).No. 13098 of 2010, only on the ground that the petitioner's husband was retired and died and the petitioner is being a widow taking the family pension, recovery is not enforceable.

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8. Now, the said order appears to have been misconceived by the petitioner as if her husband is entitled to get the salary as calculated at the first instance which is contrary to the Rules. Insofar as the audit objection is concerned, the audit objection is found to be correct as per law and the husband of the petitioner was paid over much above the salary and hence, the learned Single Judge of this Court in W.P(MD).No.13098 of 2010, by an order dated 30.11.2010 ordered recovery from the widow of the deceased employee need not to be enforced. However, the same amount of recovery is ordered to be recovered from the person who is responsible for such disbursement. Hence, I am of the view that the prayer sought for in the Writ Petition itself is misconceived. Further, the said order was passed only in respect of enforceability of recovery order from the widow of the deceased Government Employee that does not mean and loom large to claim the salary drawn by the deceased husband which is incorrect salary.

9. As I found that the calculation made in the audit objection is just and reasonable and in view of the fact that the prayer in the Writ Petition itself is misconceived by the petitioner, and this Court is not inclined to grant the relief sought for this Writ Petition and the same cannot be approved by this Court.

10. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Commissioner,
Madurai Corporation,
Madurai - 2.

WP (MD) .No.18629 of 2013

08.09.2020

NR (16.09.2020) 4P 2C