BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.12002 of 2014
and MP(MD)No.1 of 2014

V.Yasodha ... Petitioner

-Vs-

1.The Treasury Officer,
District Treasury,
Madurai District.

2.The Assistant Treasury Officer,
District Treasury, Madurai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents, dated 15.04.2014 in Na.Ka.No.5250/2014/F1 and to quash the same and direct the respondents to return back the amount of Rs.14,638/- which was deducted from petitioner's pension.

For Petitioner : Mr.A.P.Athithan

For Respondents: Mr.P.Mahendran
Additional Government Pleader

ORDER

The writ petitioner is the family pensioner. Her husband Mr.V.Vellaichamy was working as Block Development Officer in Madurai District and retired from service on 31.01.1988. After retirement, the husband of the writ petitioner was receiving the pension in P.P.O.No.A50090, unfortunately, the husband of the writ petitioner died on 08.11.1988. Thereafter, the writ petitioner is receiving the family pension. Surprisingly, after a lapse of many years, the Treasury Officer passed the impugned order in proceedings, dated 15.04.2014, stating that an excess arrears of pension was granted and therefore, the said amount of Rs.47,011/- is to be recovered by way of monthly installments. Challenging the said recovery order, the present writ petition is filed.

2.No show cause notice was issued to the writ petitioner before passing the impugned order of recovery. Any order affecting the monetary benefits of the pensioners /family pensioners is to be passed only after providing an opportunity. Secondly, there is no misrepresentation or otherwise on the part of the writ petitioner, while fixing the pension to her husband or family pension to her. In the absence of any misrepresentations, the excess amount, if at all paid to the family pensioner, the same cannot be recovered after a lapse of many years.

3.The Courts have repeatedly held that the excess pension or family pension paid cannot be recovered after a lapse of many years, even, if such payments are found to be erroneaous. In the present case, the writ petitioner was aged about 67 years at the time of filing of the writ petition and now she would be around 73 years. The excess pension, if recovered, the same would affect the livelihood of the writ petitioner as she is a family pensioner. The Hon'ble Supreme Court of India in the case of ***State of Punjab Vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334*** settled the principles in paragraph No.18 of the Judgment, which is 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 iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

4.In view of the fact that the writ petitioner is a family pensioner, the excess payment paid cannot be recovered. However, the authorities competent are empowered to correct the mistake, if any occurred in fixation of pension or family pension beyond that they cannot recover the excess payment already paid.

5.It is brought to the notice of this Court that the respondents had already recovered a sum of Rs.14,638/- (Rupees Fourteen Thousand Six Hundred and Thirty Eight only) based on the impuged recovery order. Thus, the following orders are passed:-

(i)The impugned order passed by the first respondent in proceedings Na.Ka.No.5250/2014/F1, dated 15.04.2014, is quashed;

(ii)The respondents are directed to verify the fixation as applicable to the writ petitioner and correct the fixation, if any error and pay the correct family pension continously.

(iii)The excess amount of Rs.14,638/- (Rupees Fourteen Thousand Six Hundred and Thirty Eight only), already recovered from the petitioner based on the impugned order, is directed to be returned to the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order.

6.Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Treasury Officer,
District Treasury,
Madurai District.

2.The Assistant Treasury Officer,
District Treasury, Madurai District.

+1 CC to SGP (SR-21475[F] dated 06/11/2020)

W.P.(MD).No.12002 of 2014
05.11.2020

NR (20/11/2020) 3P : 4C