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WP(MD).No.21433 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2020

DELIVERED ON : 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.21433 of 2014

and

M.P(MD).No.1 of 2014 and 1 of 2015

A. Pandiammal : Petitioner
Vs.

1.The Secretary to the Government,
Finance (Pension) Department,
Secretariat,
Chennai - 09.

2.The Accountant General (A & E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 18.

3.The District Treasury Officer,
Madurai District,
Madurai - 20.

:Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ Certiorarified Mandamus to call for the records of the impugned order issued by the third respondent in Na.Ka.No. 5250/ 2014/F1, dated 02.04.2014 and quash the same and consequently, direct the respondents to refund the amount so for recovered from the family pension of the petitioner within a specified time frame fixed by this Court.

For petitioner : Mr.L. George Paul Antony
For Respondents : Mr. J. Gunaseelan Muthiah
Additional Government Pleader

ORDER

Challenging the order of recovery from the family pension payable to the petitioner, who is the wife of the deceased Government employee viz., R. Andi, she has filed the present writ petition.

2. Service Matrix of the petitioner's husband is as follows:

The petitioner's husband viz., Late R. Andi, served as Head Constable in Police Department and obtained compulsory retirement on

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



28.06.2001. After the death of her husband on 23.08.2009, she was receiving family pension of Rs.4,294/-. The grievance of the petitioner is that on 02.04.2014 the third respondent herein issued an impugned order in Na.Ka.No.5250/2014/F1, dated 02.04.2014 to recover excess payment in her family pension. The third respondent has stated in the said impugned order that the petitioner was entitled to Rs.4,294/- as enhanced rate of Family Pension till 24.04.2011 and thereafter, from 25.04.2011 Rs.3,050/- as normal rate of family pension. But, they have paid from April 2011 to January 2014, under the basis of enhanced rate of family pension, hence, there was excess payment of Rs.69,184/- to her. The third respondent is deducting the excess payment from her family pension from April 2014 onwards. The excess payment is not due to her false representation or misrepresentation. Therefore, the recovery of Rs.69,184/- from her family pension is arbitrary. In the impugned order dated 02.04.2014, there is no reason that the alleged excess payment of family pension for the period of April 2011 to January 2014 was neither due to her false representation nor misrepresentation of any facts. Therefore, the alleged excess payment is purely an act of the administration. In support of his contention, the learned counsel appearing for the petitioner relied upon the Judgment reported in **2009(3) SCC 475 (Syed Abdul Qadir and others Vs. State of Bihar and others)**.

3. Per contra, the learned Additional Government Pleader submitted that the excess payment may due to wrong / irregular pay fixation can always be recovered and in support of his contention he relied upon the Judgment of the Hon'ble Supreme Court reported in **2012(8) SCC 411 (Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others)**, wherein at paragraph No.15 it has been held as follows:

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col.B.J. Akkara (Retd.,) vs. Union of India (2006 11 SCC 709) Case, the excess payment may due to wrong / irregular pay fixation can always be recovered."

4. After hearing the counsel for the petitioner and taking note of the service matrix of the deceased R.Andi, who is the husband of the petitioner herein, it is seen that the said R.Andi retired on 28.06.2001 on compulsory retirement and he died on 23.08.2009 and the Family Pension was sanctioned at Rs.4,294/- per month. Subsequently, the respondents found that she is not eligible for the said enhanced rate of family pension and only entitled to normal rate of pension at the rate of Rs.3,050/- and hence, passed order for recovery of excess amount paid to the widow of the deceased Government employee viz., .. (in toto), the order of recovery from the family pension payable to the petitioner is under challenge.



5. The word "Pension" in Section 11 of the Pensions Act (23 of 1871), namely, a periodical allowance or stipend, granted not in respect of any right, privilege, ,perquisite or office, but on account of past services or particular merits or as compensation to dethroned princes, their families and dependents.

6. The petitioner herein was granted family pension as per Rule 49 of the Tamil Nadu Pension Rules.

Section 11 of the Pension Act reads as follows:

"11.Exemption of Pension from Attachment: No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court."

Rule 49 B of the Tamil Nadu Pension Rules reads as follows:

49B. Family pension in certain cases not to be governed by the Family Pension Rules, 1964. - Where a Government servant who is not governed by the Tamil Nadu Government Servants' Family Pension Rules, 1964 dies,-

(a)

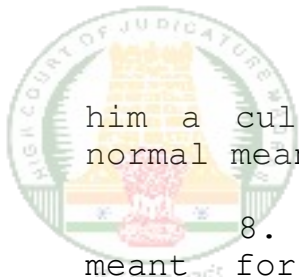
(b)

(2) Any member of the family of the deceased Government servant, who is in receipt of a family pension under any rules in force prior to the 1st April 1964, may exercise his option to receive family pension under the said rules or under sub-rule (1).

(3) Every member of the family of the deceased Government servant, who opts to continue to be governed by the old rules, shall be paid a family pension determined by taking together the family pension and dearness allowance thereon paid to him immediately before the 1st April 1979.

(4)"

7. Taking into consideration that the family pension to the widow of the deceased Government employee that the pension is not an ex gratia payment but it is a payment for the past service rendered; and it is social welfare measure rendering socio-economic justice to those who in the 'hey days' of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon additional condition of impeccable behaviour even subsequent to retirement and to ensure for



him a culturally acceptable minimum standard of living when the normal means of doing failed.

8. The family pension contemplates two aspects, namely, it is meant for those primarily concerned to ensure provision for individual of a cash income adequate, when taken along with the benefits in kind provided by the other social services, such as free-medical aid, to ensure for them a culturally acceptable minimum standard of living, when the normal means of doing so failed (**D.S.Nakara vs. Union of India 1983(1) SCC 322**).

9. In the decision referred Chandi Prasad Uniyal and others vs. State of Uttarakhand and others[(2012)8 SCC 117], the Hon'ble Supreme Court has observed that a Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives as excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him.

10. Therefore, this Court is of the considered view that when widow of a deceased Government employee was sanctioned family pension as per Rule 49 of the Tamil Nadu Pension Rules and the amount has been fixed pursuant to Section 11 of the Pension Act. Such a beneficiary under the family pension scheme are entitled to exemptions pointed out in the above cited **Chandi Prasad Uniyal** case.

11. On considering the factual matrix of the case, I find that in as much as the nature of pension given to the petitioner herein is only a family pension under the Tamil Nadu Pension Rules and as such the factual position falls under exemption as per paragraph No.15 of the Judgment of the Hon'ble Supreme Court reported in **2012 (8) SCC 411 (Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others)**.

12. In this view of the matter, this Writ Petition is allowed and the impugned order of recovery passed by the third respondent in Na.Ka.No.5250/2014/F1, dated 02.04.2014 is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)



PJL

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.

To

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VB (18.08.2020) 5P 4C