



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2020

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.9769 of 2014

and

M.P.(MD)Nos.1 of 2014

C.Ramamoorthy

... Petitioner

Vs.

1.The Principal Accountant General (A & E),
361, Anna Salai,
Chennai-600 018.

2.The District Treasury Officer,
District Treasury,
Madurai-625 020.

3.The Assistant Treasury Officer,
District Treasury,
Madurai-625 020.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the records relating to the impugned order dated 02.04.2014 passed by the second respondent in his proceedings in Na.Ka.No.5250/2014/F1 and quash the same and consequently, direct the second respondent to refund the recovered amount of Rs.6,408/- in the month of April-2014 and Rs.8,721/- in the month of May 2014 to the petitioner within the time frame as fixed by this Court.

For Petitioner : Mr.K.Muthumalai

For Respondents : Mr.C.M.Mari Chelliah Prabhu
(R2 & R3) Additional Government Pleader

For R1 : P.Gunasekaran

ORDER

The order of recovery passed by the third respondent in proceeding dated 02.04.2014 is under challenge in the present writ petition.



2.The wife of the writ petitioner Tmt.Rajamani was appointed as Maternity Assistant in the Health Services Department. She worked as Village Health Nurse and voluntarily retired from service dated 13.08.2001. The wife of the petitioner died on 25.12.2009. The petitioner as a spouse received the family pension from July 2010 onwards. The family pension was fixed as per the government orders in force and the petitioner was continuously receiving the family pension. While so, the impugned order of recovery has been passed by the third respondent without even issuing a show cause notice. The impugned order states that there was an error in calculation of family pension and excess payment was made. Thus, the excess payment paid to the writ petitioner is sought to be recovered by way of installments.

3.The learned counsel appearing on behalf of the respondents is unable to establish that the show cause notice was issued to the writ petitioner before passing the impugned order of recovery.

4.This being the factum, the recovery of excess payment from the family pensioners or pensioners is not permissible. In the event of any misrepresentation on the part of the family pensioners or any undertaking given by the family pensioners at the time of fixation or re-fixation of pension, that alone, excess payment can be recovered and not otherwise. In the present case, no such allegations are established against the writ petitioner. The family pension was fixed by the respondents themselves based on the service records of the deceased employee. Thus, the excess payment already paid to the writ petitioner cannot be recovered. However, error, if any occur regarding the fixation of family pension, can be rectified by issuing a proper notice to the petitioner enabling him to defend his case. Further, any order affecting the monetary benefits of the pensioners or the family pensioners cannot be issued without providing an opportunity to the persons who all are likely to be affected.

5.In this view of the matter, the following orders are passed:-

1.The impugned order passed by the third respondent in Na.Ka.No.5250/2014/F1, dated 02.04.2014, is quashed.

2.The respondents are directed to correct the fixation of family pension as per the Pay Rules and Government Orders in force and continue to pay the family pension in accordance with law.

3.The excess payment already paid to the writ petitioner cannot be recovered from the petitioner. The amount already recovered pursuant to the impugned order is directed to be refunded to the writ petitioner within a period of twelve weeks

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

WEB COPY

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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

1. The Principal Accountant General (A & E),
361, Anna Salai,
Chennai-600 018.

2. The District Treasury Officer,
District Treasury,
Madurai-625 020.

3. The Assistant Treasury Officer,
District Treasury,
Madurai-625 020.

+1 CC to M/s.GP (SR-21471[F] dated 06/11/2020)

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PU(CO)

TR(11.11.2020) 3P 5C