



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.22915 of 2015

and

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

1.Kamatchi Sethu(deceased)

2.P.Sethu

... Petitioner

(P2 impleaded vide order dated 28.08.2020
in W.M.P(MD)No.3467 of 2020)

Vs.

1.The District Treasury Officer,
Office of the District Treasury Officer,
Collectorate Campus,
Madurai-625 020,
Madurai District.

2.The Additional Treasury Officer,
Office of the District Treasury Officer,
Collectorate Campus,
Madurai-625 020,
Madurai District.

3.The Accountant General (A&E)
No.361, Annasalai,
Teynampet, Chennai-08.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of recovery in Na.Ka.No.17185/2015/K1 dated 02.12.2015 on the file of the respondent No.1 and quash the same as illegal.

For Petitioner	: Mr.G.Karthik for M/s.T.Lajapathiroy
For R1 and R2	: Mr.G.Arjunan Government Pleader
For R3	: Mr.P.Gunasekaran

ORDER

The impugned order of recovery dated 02.12.2015 is sought to be quashed in the present writ petition.



2.The petitioner is a family pensioner and during the pendency of the writ petition, the original petitioner died and one Mr.P.Sethu, legal heir is impleaded as petitioner.

3.The case of the petitioner is that the impugned order of recovery has been passed to recover a sum of Rs.2,14,416/- from the pension by stating that excess pension has been paid to the petitioner.

4.The learned counsel appearing on behalf of the petitioner states that no show cause notice or opportunity of hearing was given to the writ petitioner before passing the impugned order.

5.The learned counsel appearing on behalf of the third respondent is unable to establish that show cause notice was issued and opportunity was provided to the writ petitioner.

6.This apart, the petitioner was aged about 76 years at the time of passing of the impugned order. The Hon'ble Supreme Court also clarified the legal principles in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 Supreme Court Cases 334** that the excess payment if any paid to the pensioner cannot be recovered, after a lapse of many years. Therefore, the recovery of excess amount cannot be made from the petitioner. However, an error if any in fixation of pay and pension, the said error can be rectified in accordance with the rules in force.

7.With this view of the matter, the following orders are passed;

(i)The impugned order passed by the first respondent in Na.Ka.No.17185/2015/K1, dated 02.12.2015, is quashed.

(ii)The first respondent is directed to issue show cause notice setting out all facts and details to the impleaded petitioner within a period of four weeks from the date of receipt of a copy of this order. On receipt of such show cause notice, the impleaded petitioner is at liberty to submit his explanation within a period of two weeks thereafter. Subsequently, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law.

(iii)The respondents are directed to repay the amount already recovered, if any. The respondents are directed to correct the fixation of pension and family pension in accordance with the rules in force and corrected pension and family pension is to be paid accordingly.



(iv) Accordingly, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(Records)

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The District Treasury Officer,
Office of the District Treasury Officer,
Collectorate Campus,
Madurai-625 020,
Madurai District.

2.The Additional Treasury Officer,
Office of the District Treasury Officer,
Collectorate Campus,
Madurai-625 020,
Madurai District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-23233[F] dated
30/11/2020)

+1 CC to M/s.GP (SR-23378[F] dated 30/11/2020)

W.P. (MD) No.22915 of 2015
and
M.P (MD) .No.1 of 2015
27.11.2020

kg (CO)
TR(18.12.2020) 3P 5C