

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.5822 of 2015

Nachiammal

... Petitioner

Vs

1.Accountant General,
Office of the P.R.Accountant General,
(Account & Entitlement) Tamilnadu,
361, Anna Salai, Chennai - 600 018.

2.The Treasury Officer,
District Treasury Officer,
Coimbatore.

3.The Treasury Officer,
Sub-Treasury Officer,
Pollachi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to pay entire pension amount to the petitioner every month without withholding any part of the amount from the pension of the petitioner consequently direct the respondents to repay entire amount which was withhold from the pension of the petitioner within the specific period of time fixed by this Hon'ble Court.

For Petitioner : Mr.T.Ganesan

For R1 : Mrs.J.Sree Vidya, AGIC

For R2 & R3 : Mr.R.S.Selvam, GA

ORDER

The relief sought for in this writ petition is to direct the respondents to pay entire pension amount to the petitioner every month without withholding any part of the amount and consequently repay the entire withholding amount within a time frame to be specified by this Court.

2. According to the petitioner, she worked as a Gang Mazdoor in Highways Department and retired from service on 30.04.2006. Thereafter, she has been receiving a sum of Rs.20,614/- as pension. While so, she was informed by the third respondent that pension amount was wrongly calculated and hence, a sum of Rs.5,00,000/- was excessively paid to her, which was going to be recovered from her pension in the future months. Accordingly, the petitioner was paid a sum of Rs.1,600/- from the month of December, 2014, after withholding Rs.16,354/-. Aggrieved over the action so taken by the respondents, she has come up with this writ petition for the aforesaid relief.

3. The learned counsel for the petitioner submitted that without issuing any notice and furnishing the details regarding excess payment made, the respondents have started recovery from the pension amount payable to the petitioner, which is arbitrary, illegal and against the principles of natural justice. Thus, according to the learned counsel, in the absence of any fault on the part of the petitioner, no recovery shall be made by the respondents.

4. On the other hand, the learned Government Advocate appearing for the respondents 2 and 3, submitted that the pension of the petitioner was wrongly calculated and the same was paid in excess and therefore, the respondents are entitled to recover the same. However, he fairly submitted that after issuing notice and furnishing break up details regarding the excess payment effected to the petitioner and also providing an opportunity of personal hearing, the respondents would pass appropriate orders, with regard to recovery of excess payment made. He further assured that till such time, no recovery would be made from the monthly pension of the petitioner.

5. Heard both sides and perused the materials placed before this Court.

6. It is admitted by both sides that before effecting recovery of the excess payment from the pension payable to the petitioner, she was not issued with any notice nor provided an opportunity of hearing. It is also nobody's case that the wrong calculation of pension was due to fault on the part of the petitioner. Therefore, this Court is of the opinion that in the absence of any misrepresentation / fault on the part of the petitioner, the excess amount, if any paid to her, shall not be recovered, that too, without following due process of law. At this juncture, it is relevant to quote the observation of the Supreme Court in *Purushottam Lal Das v. State of Bihar* [2006(11) SCC 492] that 'the Department cannot resort to recovery of excess amount if the said excess amount was paid not due to any misrepresentation on the part of the concerned employee'.

7. In such view of the matter, recording the submissions so made by the learned Government Advocate appearing for the respondents 2 and 3, this Court directs the respondent authorities to issue notice and furnish the break up details regarding the excess amount paid and after providing an opportunity of hearing to the petitioner, pass appropriate orders, with regard to recovery, on merits and in accordance with law. Till such time, the respondent authorities shall not make any recovery from the monthly pension payable to the petitioner.

8. Accordingly, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-CO)

//True copy//

Sub Assistant Registrar

mtl

To

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(Account & Entitlement) Tamilnadu,
361, Anna Salai, Chennai - 600 018.
2. The Treasury Officer, District Treasury Officer,
Coimbatore.
3. The Treasury Officer, Sub-Treasury Officer,
Pollachi.

+1cc to Mr. J. Sreevidhya, Advocate SR.No.19321

+1cc to Government Pleader SR.No.19940

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GSM(CO)
GMY(05/07/2021)

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