IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.22288 of 2014
& M.P.No.1 of 2014

E.Dharmasingh ... Petitioner

Vs.

1. The Principal Accountant General (G&SSA),
Tamilnadu & Puducherry,
361, Annasalai, Teynampet, Chennai - 600 018.

2. The Sub Treasury Officer,
Sub Treasury Office,
Gingee, Villupuram District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to cancel the recovery of Rs.1,14,596/- from the petitioner in respect of enhanced family pension of the petitioner's wife payable to the petitioner.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.V.Vijay Shankar - R1
Mr.J.Ramesh
Additional Government Pleader - R2

ORDER

According to the petitioner, his wife by name G.Santhakumari retired from service on 31.05.2006 as Headmistress in ADW Elementary School, Thenalapakkam, Tindivanam and she died on 23.11.2009. After her demise, the petitioner was receiving pension from 01.12.2009 under the Family Pension Scheme. While so, the Family Pension amount was reduced from Rs.25,960/- to Rs.10,596/- from June 2014. When the petitioner enquired about the same, he was informed that the enhanced family pension would have been given only for a period of seven years from the date of death of the deceased Government servant or upto the age of 65 years, whichever is earlier, due to which, audit objection was raised; the petitioner was paid the enhanced family pension at Rs.12,980/- per month from 17.05.2013 to 30.04.2014 and hence, the excess payment of Rs.1,14,596/- was ordered to be recovered. Stating that without issuing any notice or passing any order, the respondents reduced the family pension by recovering the alleged excess payment, the petitioner has filed the present writ petition seeking a mandamus, directing the respondents to cancel the alleged recovery of Rs.1,14,596/- from the family pension payable to the petitioner.

2.The learned counsel for the petitioner submitted that since the petitioner was not given any notice / order indicating reduction of his pension and also recovery of any excess pension paid to him, the recovery made by the respondents is illegal and improper being violative of the principle of natural justice. He also submitted that even if the petitioner has been paid with any excess pension, the same could not have been realized from his pension as he had no contribution in release of the excess pension in his favour, that too, without any prior notice. In support of his submission, the learned counsel placed reliance on a decision of the Apex Court in State of Punjab and others v. Rafiq Masih (White Washer) and others, [(2015) 4 SCC 334], wherein in paragraph 18, it was held as follows:-

> “8.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, 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 again an inferior post.
>
> (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitus or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery.”

Hence, it is submitted that the alleged recovery made by the respondents is liable to be cancelled and the pension already recovered needs to be refunded in favour of the petitioner.

3.In response, the learned counsel appearing for the respondents submitted that as per Rule 49(3)(a)(i) and (ii) of the Tamil Nadu Pension Rules, 1964, the enhanced Family Pension would have been paid for a period of seven years from the date of death or upto the age of 65 years, whichever is earlier, whereas in the present case, the petitioner was paid the enhanced family pension beyond the period of seven years and hence, the recovery was made by way of reducing the family pension payable to the petitioner, which cannot be said to be arbitrary, and illegal.

4.Heard both sides and perused the records.

5.It is the specific case of the petitioner that without issuing any notice / order, the respondents reduced the family pension payable to him. On the other hand, the respondents stated that the enhanced amount of family pension was granted to the petitioner only for a limited period of seven years from the date of death of the deceased Government servant or upto the age of 65 years, whichever is earlier and hence, the excess amount paid to the petitioner was ordered to be recovered by reducing the family pension payable to him.

6.In the opinion of this Court, there is no manner of doubt that the respondents are entitled to recover the excess amount, if any, paid to the petitioner. But, before such recovery, the petitioner ought to have been noticed and the recovery should have been made only after hearing him. Admittedly, there is no record / material made available to show that after bringing the said fact to the knowledge of the petitioner, the recovery of the alleged excess payment was made by the respondents. In such circumstances, the recovery effected by the respondents by reduction of family pension amount is definitely arbitrary, illegal and violative of the principles of natural justice and hence, the same is liable to be cancelled and is accordingly, cancelled.

7.Consequently, the respondents are directed to issue notice to the petitioner indicating the amount recoverable and thereafter, pass appropriate orders, in accordance with law, after providing an opportunity of personal hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

8.The writ petition stands disposed of in the above terms. No costs. Consequently, miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Principal Accountant General (G&SSA),
   Tamilnadu & Puducherry,
   361, Annasalai, Teynampet, Chennai - 600 018.

2. The Sub Treasury Officer,
   Sub Treasury Office,
   Gingee, Villupuram District.

+1cc to Mr.C.S.Associates, Advocate, S.R.No. 3329
+1cc to Mr.V.Vijayashankar, Advocate, S.R.No. 3189
+1cc to the Government Pleader, S.R.No. 3575

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SS(CO)
GN(07/07/2021)