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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.6702 OF 2017

AND

W.M.P.NO.7243 OF 2017

S.Gundanna (Deceased)

Seethalakshmi
W/o.S.Gundanna
(Substituted as LR of deceased
sole petitioner vide order
dated 24.04.2019 made in
W.M.P.No.26713 of 2018 in
W.P.No.6702 of 2017)

... Petitioner

-Vs-

The Assistant Treasury Officer,
Sub Treasury Office,
Hosur.

... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the respondent in Na.Ka.No.2228/12/3/2016 dated 16.11.2016, 07.12.2016 and the calculation memo and quash the same thereby direct the respondent to refund the attached amount from the pension in PPO No.A775921 and to revise the pension.

For Petitioner : Ms.K.Bhuvaneswari
For Mr.A.R.Nixon

For Respondent : Mr.E.Veda Bagath Singh
Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein is the wife of deceased S.Gundanna, who had retired as a Block Development Officer on 30.09.1989 and had been receiving the monthly pension regularly. In this background, the Government had issued G.O.Ms.No.235, Finance Department, dated 01.09.2009, ordering to revise the pension benefits to the pensioners and family pensioners. It is on this basis the deceased pensioner's pension came to be revised by reducing it from Rs.10,500 to Rs.7,490/- and a recovery order has been passed.

3. The learned Special Government Pleader appearing for the respondent submitted that pursuant to the recovery order, a sum of Rs.1,15,552/- for the period between August 2016 and July 2017 has already been recovered.

4. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, has held that, recovery of excess payment from retired employees, which mistake is attributable to the employer, cannot be recovered. Furthermore, the belated recovery of pension, when the excess payment was made more than 5 years back, is also one of the grounds where the Hon'ble Supreme Court had held as impermissible in law.

5. In the instant case, the petitioner's husband had retired way back on 30.09.1989 and after more than 10 years, the respondent had initiated recovery proceedings based on certain alleged excess payment and the consequent revision of his pension. The law laid down by the Hon'ble Supreme Court in White Washer's case (supra) squarely applies to the present case and therefore, the action initiated against the pensioner, through the impugned proceedings, cannot be sustained.

6. In the light of the above observations, the impugned orders dated 16.11.2016 and 17.12.2016 passed by the respondent herein, are quashed. Consequently, there shall be a direction to the respondent to refund the attached recovery amount of Rs.1,15,552/- to the petitioner herein forthwith, in any event, within a period of 6 weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk



To

The Assistant Treasury Officer,
Sub Treasury Office,
Hosur.

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+1cc to Mr.A.R.Nixon, Advocate, S.R.No.67203

W.P.NO.6702 OF 2017

PM(CO)
PBS/10/01/2022