



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.1208 of 2019

and

C.M.P (MD) Nos.10449 & 10451 of 2019

Kalyana Sundari

... Appellant/Petitioner

Vs.

1.The Accountant General (A & E)

Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai - 18.

2.The Commissioner of Treasuries and Accounts,
Anna Salai, Nandanam,
Chennai - 35.

3.The District Educational Officer,
Kovilpatti,
Thoothukudi District.

4.The Assistant Treasury Officer,
Vilathikulam,
Thoothukudi District.

5.The Secretary
T.V.A.Nalla Alagau Nadar Higher Secondary School
Perilovanpatti,
Thoothukudi District.

... Respondents/ Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 31.01.2019 made in W.P.[MD] No.2075 of 2019 on the file of this Court.

Prayer in WP(MD) . 2075/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the respondents from making any recovery from the petitioners monthly pension

For Appellant	: Mr.Mr.M.E.Ilango
For 1st Respondent	: Mr.P.Gunasekaran
For Respondents 2 & 4	: Mr.K.P.Krishnadoss, Special Government Pleader
For Respondents 3 & 5	: Mrs.S.Srimathy, Special Government Pleader



JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This writ appeal filed by the Writ Petitioner is directed against the order, dated 31.01.2019 passed in W.P.[MD]No.2075 of 2019. The Writ Petition was filed praying for issuance of a Writ of Mandamus to forbear the respondents from making any recovery from the appellant's monthly pension.

2. The case of the appellant is that she was working as a B.T., Assistant in the fifth respondent School and retired from service after 28 years on 31.10.2008 and she received a monthly pension of Rs.35,258/- (Rupees Thirty Five Thousand Two Hundred and Fifty Eight only). For the month of December 2018, since full pension was not credited, the petitioner approached the authorities and came to know that instructions have been issued by the second respondent for effecting recovery. As excess payment of Rs.4,04,608/- (Rupees Four Lakhs Four Thousand Six Hundred and Eight only) had been made to the petitioner. The petitioner in the writ petition pleaded that the alleged mistake committed by the Department cannot be attributed to her and because of her ill health and other issues, such excess payment made, should not be recovered.

3. The writ petition was disposed of, by directing the fourth respondent to determine the pension payable taking the appellant's last drawn salary as Rs.23,030/- (Rupees Twenty Three Thousand and Thirty only) with regard to the excess amount paid, which was directed to be deducted from the future pension on instalment basis at permissible rate. Aggrieved by the same, the appellant is before us by way of this appeal.

4. As noticed from the affidavit filed in support of the writ petition, the appellant never disputed the excess payment and her case was that such excess payment is not attributable to her and mistake having been committed by the Department, no recovery should be effected from her and she referred to the decision of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in **2014 (8) Supreme Court Cases 883**.

5. Before us in the writ appeal, the appellant has engaged a new counsel and they have contended that as per Rule 56 of Tamil Nadu Pension Rules, revision of Pension cannot be made without sanction of the Government, if any clerical error is detected, after a period of two years and that the present attempt for recovery beyond the period of two years, without permission of the Government, the recovery could not have been effected.

6. We have Heard Mr.M.E.Ilango, learned Counsel appearing for the appellant, Mr.P.Gunasekaran, learned Counsel appearing for the first respondent, Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents 2 & 4 and Mrs.S.Srimathy,



learned Special Government Pleader appearing for the respondents 3 & 5.

7. The mistake has occurred not at the Departmental end, but the mistake was precipitated by the fifth respondent management, where the appellant was working. It appears that at the relevant time, all particulars should be furnished in Compact Disc and the reason for paying higher pension was on account of adding grade pay of Rs.5,400/- (Rupees Five Thousand and Four Hundred only) twice. Consequently, the last drawn salary of the appellant which should have been at Rs.23,030/- (Rupees Twenty Three Thousand and Thirty only) was computed as Rs.28,430/- Rupees Twenty Eight Thousand Four Hundred and Thirty only) and based on that, pension has been worked out. The appellant is not a Class IV employee, but retired as a BT Assistant, fully aware of the pay scale, which is prescribed for the post, in which, she is working. That apart, the fifth respondent management is also responsible for having furnished incorrect particulars to the Department and had they verified the same at appropriate time, the mistake could have been averted. Therefore, if at all the appellant is aggrieved, the appellant should claim damages from the fifth respondent management and the Government Exchequer should not suffer on account of the excess payment made, which appears to be a wilful conduct of the fifth respondent management, probably with the knowledge of the appellant.

8. For the above reasons, we find no grounds to interfere with the order passed in the writ petition. We have perused the representation, dated 02.01.2019, given by the petitioner in page No.14 of the typed set, wherein, she has agreed that if the instalments are of lesser amount, it will be helpful for her. The learned Single Bench has already issued directions in this regard, which will take care of the situation.

9. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Accountant General (A & E)
Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai - 18.

2.The Commissioner of Treasuries and Accounts,
Anna Salai, Nandanam,
Chennai - 35.

3.The District Educational Officer,
Kovilpatti,
Thoothukudi District.

4.The Assistant Treasury Officer,
Vilathikulam,
Thoothukudi District.

5.The Secretary
T.V.A.Nalla Alagau Nadar Higher Secondary School
Perilovanpatti,
Thoothukudi District

+1 CC to M/s.SPL GP (SR-16944[F] dated 21/04/2021)

W.A.[MD]No.1208 of 2019
20.04.2021

MA(CO)
KB(30.04.2021) 4P 7C