



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) .No.3127 of 2018

and

W.M.P. (MD) .No.3281 of 2018

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Kasiammal

... Petitioner

vs.

1.Union of India,
New Delhi
by its Principal Secretary,
Human Resources Department,
New Delhi.

2.The National Institute of Technology,
Tiruchirapalli
by its Director,
National Institute of Technology,
Trichy 15.

3.The Registrar,
National Institute of Technology,
Trichy 15.

... Respondents

PRAYER: 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 recovering the amount from the monthly pension of the petitioner.

For Petitioner : Mr.S.Muthukrishnan

For R1 & R2 : No appearance

For R3 : Mrs.J.Maria Roseline

O R D E R

This writ petition is filed seeking a Mandamus, forbearing the respondents from recovering any amount from the monthly pension of the petitioner.

2. The petitioner is the wife of one Muthu, who had been working in the National Institute of Technology as a Driver. He retired on 30.06.2002, upon superannuation. He was given pension regularly till his demise on 07.01.2006. The petitioner was sanctioned family pension, thereafter, which she has been receiving regularly.



3. The petitioner's husband had been sanctioned 5% of personal pay with effect from 01.07.1999, as per G.O.(Ms.). No.664, Finance (Pay Cell), Department, dated 24.08.1992, which had been taken into account in computing the pension. This, according to the respondent, constituted an error as the 5% personal pay ought to have been excluded in determining the pension payable. The respondents have thus resorted to recovery of the pension allegedly paid in excess from the family pension sanctioned to the petitioner.

4. No counter has been filed in this matter. However, Ms.J.Maria Roseline, who appears for the Registrar, National Institute of Technology / R3 would confirm such recovery. She would however bring to my notice an order passed on 17.03.2016, as per which, the recovery is being effected. In light of the fact that the aforesaid order of recovery has not been challenged, she would argue that the petitioner is not entitled to the Mandamus, as sought.

5. The recovery sought to be effected under Order dated 17.03.2016, relates to pension that has been sanctioned from 30.06.2002__and recomputes the pension from that date onwards, operating retrospectively. This is clearly inadmissible and contrary to law as well as to the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Ors Vs. Rafiq Masih (White Washer) and others* (2015 (4) SCC 334).

6. The Hon'ble Supreme Court considered in that case, various situations in which recovery was being effected, holding categorically, at paragraph 18 thereof that there are certain situations in which recovery was not permissible and enumerating such situations illustratively. One of the instances is when the employee concerned has superannuated or when the recovery is undertaken proximate to superannuation.

7. The relevant paragraph is extracted below:

18. 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, based on the decisions referred to hereinabove, we may, as a ready reference, 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 against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recover.

8. In the present case, the impugned recovery is sought to be effected 14 long years after date of superannuation of the concerned employee from out of the family pension paid to the deceased employee's wife. I find no justification or warrant for such belated action. The respondents have missed not one, but two buses in the matter.

9. The deceased husband of the petitioner was given pension at the time of superannuation on 30.06.2002. Thereafter, he passed away on 07.01.2006 and the petitioner was sanctioned family pension. Thus there have been two instances, when the respondents have committed/perpetrated the alleged error.

10. The petitioner has been continuously receiving the pension till 2016. In my view, the respondents have been wholly lethargic and negligent in continuing /perpetrating the error that, according to them, was occasioned in 2002. In the light of the discussion as aforesaid, the prayer of the petitioner is moulded so as to set aside the recovery ordered under order dated 17.03.2016, and the Mandamus, as sought for by the petitioner, is granted. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

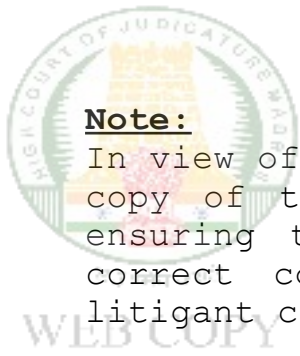
Sd/-

Assistant Registrar ()

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/ /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 Principal Secretary,
Union of India,
New Delhi Human Resources Department,
New Delhi.
- 2.The Director,
The National Institute of Technology,
Tiruchirapalli National Institute of Technology,
Trichy 15.
- 3.The Registrar,
National Institute of Technology,
Trichy 15.

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