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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7561 of 2013

B.Kala

...Petitioner

-Vs-

1.The Chief Engineer,
Agricultural Engineering,
Nandanam, Chennai - 600 035.

2.The Assistant Executive Engineer,
Agricultural Engineering,
Government Tractor Workshop,
Vellore - 2.

3.The Accountant General (A&E),
Teynampet, Chennai - 600 018.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in Lr.No.A1/1161/06 dated 30.08.2006, quash the same and consequently directing the 2nd respondent to cancel the revision reducing the pay and allowances of the petitioner's husband 9 months after the date of his retirement and also for releasing the excess pay and allowances withheld to the tune of Rs.3,00,271/- to the petitioner's husband.

For Petitioner : Mr.R.Dhamodaran

For R1 & R2 : Mr.Veda Bagath Singh,
Special Government Pleader

For R3 : Mrs.Hema Murali Krishnan



ORDER

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

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2. The husband of the petitioner herein, namely, Thiru Babu, while serving as a Blacksmith Grade-I, reached the age of superannuation and accordingly was permitted to retire on 30.11.2005. By the impugned order dated 30.08.2006, the second respondent herein had reduced the pay and allowances of the petitioner's husband, claiming that it was wrongly fixed and such a wrong fixture was raised during an audit objection. Consequently, the respondents had sought for recovering the excess pay drawn by the petitioner's husband to the tune of Rs.3,00,271/-, as well as the balance loan amount of Rs.1,17,320/- obtained by her husband at the Tamil Nadu Cooperative Society.

3. The impugned order cannot be sustained for three reasons. Firstly, when the respondent had permitted the petitioner's husband to retire, the relationship of the employer-employee ceases to exist and therefore, the respondents will not have any jurisdiction to recover the alleged excess payments from the petitioner's husband. Secondly, the impugned order is violative of the principles of natural justice, since no prior notice was issued, calling for the petitioner's husband's objections on the proposed recovery. Merely because there were some audit objections with regard to wrong fixation of the pay scale during the petitioner's husband's services, the second respondent herein cannot unilaterally resort to recover the alleged excess payment. Thirdly, 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 whenever an excess payment has been made, owing to the fault of the employer, such excess payment cannot be recovered from a retired Government employee and the same is impermissible in law.

4. The learned Special Government Pleader placed reliance on the averments in the counter affidavit filed by the first respondent and submitted that the excess payment drawn by the petitioner's husband to the tune of Rs.3,00,271/-, owing to wrong pay fixation, was written off, in view of the orders of the Government and therefore will not be recovered from the employee. Such a statement is hereby recorded. However, the revision of the petitioner's husband's last drawn pay under the impugned order cannot be sustained, in view of the reasons stated above. Consequently, it is hereby held that the petitioner would be entitled for drawing the family pension on the basis of last drawn pay of her husband, including the Special Pay.



5. In the light of the above observations, the impugned order dated 30.08.2006, insofar it relates to revising the petitioner's husband's pay scale and the order for recovering the excess pay and allowances to the tune of Rs.3,00,271/-, is hereby quashed. However, the liability of the loan amount of Rs.1,17,320/-, payable to the Tamil Nadu Cooperative Society, shall remain undisturbed and the respondents are at liberty to recovery the said sum from and out of the retirement and pension benefits of the petitioner's husband. The respondents shall pass appropriate orders, disbursing the entire retirement benefits, along with the pensionary benefits, by revising the petitioner's husband's pay scale and bringing it on par with his last drawn wages, including the Special Pay, within a period of four (4) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

hvk

To

- 1.The Chief Engineer,
Agricultural Engineering,
Nandanam, Chennai - 600 035.
- 2.The Assistant Executive Engineer,
Agricultural Engineering,
Government Tractor Workshop,
Vellore - 2.
- 3.The Accountant General (A&E),
Teynampet, Chennai - 600 018.

+1cc to Mr.R.Dhamodaran, Advocate SR. No.12541
+1cc to M/s.Hema Murali Krishnan, Advocate SR. No.12911
+1cc to Special Government Pleader SR. No.13349

W.P.No.7561 of 2013

RP (CO)
PR (16/03/2022)