



W.P.No.31193 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31193 of 2019
and W.M.P.No.31332 of 2019

Tmt.S.Nagammal

...Petitioner

Vs.

1.TheRegional Provident Fund Commissioner,
No.37, Royapettah High Road,
Chennai – 600 014.

2.The Assistant Provident Fund Commissioner, (Pension)
Employees' Provident Fund Organization,
37, Royapettah High Road,
Chennai – 600 014.

Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents to release the arrears of Pension from 01.01.2005 to 18.12.2011 due to petitioner's deceased husband and Family Pension from 19.12.2011 till date due to the petitioner along with appropriate interest as on date within a time frame to be fixed by this Honble Court.



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For Petitioners : Mr.R.Dhamodaran
For Respondents : Mr.V.Sundareswaran

ORDER

The relief sought for in the present writ petition is to direct the respondents to release the arrears of Pension from 01.01.2005 to 18.12.2011 due to petitioner's deceased husband and the Family Pension from 19.12.2011 till date due to the petitioner along with appropriate interest as on date within a time frame to be fixed by this Court.

2.The petitioner states that her husband Late P.Srinivasan was employed as a “Semi Skilled” employee in M/s.Addision Paints and Chemicals Limited., Sembium, Chennai. The Token Number of the deceased employee was T.K.0418 and P.F. Account No.TN/2736/755. The husband of the petitioner opted to retire under “The Early Retirement Scheme” introduced by the authorities and was relieved from the service on 29.06.2002. He was drawing monthly pension of Rs.725/- per month initially. After five years, the pension



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was stopped without any notice in the year 2007. On enquiry, the husband of the petitioner came to know that excess amount of pension was paid to him and the authorities had unilaterally commence the recovery proceedings from the monthly pension of the deceased employee.

3.The grievances of the writ petitioner is that no details for the alleged excess payment was informed to her. No Show Cause Notice was issued to the petitioner setting out the details. Against the unilateral decision, the petitioner sent several representations to the authorities competent, but they have continued the recovery proceedings and finally recovered a sum of Rs.75,308/-

4.The husband of the petitioner died on 08.12.2010. Even thereafter, the recovery continued and the petitioner was struggling even to meet out her day to day expenditure on account of the meagre amount of family pension. Under those circumstances, she approached the authorities but no action has been taken. Thus, the petitioner is constrained to move the present writ petition.



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5.The learned counsel appearing on behalf of the respondents made a submission that an intimation was given to the Bank in proceedings dated 18.03.2005 and the said proceedings was communicated to the husband of the writ petitioner. In the said communication, the authorities have requested to freeze the pension account of the deceased husband of the writ petitioner with immediate effect and provide intimation to the office of the respondents. Further, it is contended that the excess payment of pension paid to the deceased employee was recovered as per the procedure and there was no infirmity in respect of the recovery effected.

6.No doubt, an employee is entitled for payment of pension as per his eligibility. The authorities competent are empowered to recover the excess payment. However, in certain circumstances, the Courts are bound to consider the hardship if any caused to the pensioners on account of such recovery at belated point of time. That apart, it is to be considered whether the principles of natural justice has been followed while effecting the recovery proceedings.



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7. In the present case, though the respondents have communicated a letter to the Bank, it cannot be considered as a Show Cause Notice. But the decision taken by the respondents were communicated to the bank for the purpose of freezing the account. Therefore, the said proceedings dated 18.03.2005 cannot be considered as a Show Cause Notice providing opportunity to the deceased employee. That apart, the deceased employee was receiving a meagre pension amount of Rs.1500/- per month and if a sum of Rs.633/- was recovered from such a amount, this Court is of the opinion that it would cause much hardship to the pensioner. In such circumstances, the officials who all are responsible and accountable for grant of excess pension must be held liable and in the present case, actions were initiated by the respondents. Therefore, any excess amount paid on account of derelictions of duty or negligence on the part of the officials, which cause financial loss to the organisations, must be recovered from such officials and not from the poor pensioner, who was receiving a meagre amount of pension for livelihood.



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8. This Court is of the considered opinion that the respondents are bound to pay the monthly pension as per the eligibility of the respective pensioner. In the event of erroneous calculation or dereliction of duty or negligence if any on the part of the officials, then the financial loss if occurred to the organisation must be recovered from such officials and not from the poor pensioner who was receiving a sum of Rs.1000/- as monthly pension. The authorities are bound to consider the mitigating factors in such circumstances. The extreme hardship that may be caused to such pensioners are also to be taken into consideration. So also, the negligence and dereliction of duty committed by the officials to be looked into. Contrarily, in the present case, the respondents are attempting to protect the erred employees and penalise the poor pensioners, which is unacceptable. However, the learned counsel for the respondents states that the excess payment of pension occurred on account of the fault committed by the Management. If so, even in such circumstances, the authorities are bound to recover from the Management and certainly not from the poor pensioner, who is receiving a meagre amount of pension and not sufficient to meet out the livelihood. Thus, the recovery caused extreme



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hardship to the petitioner and accordingly, this Court is inclined to consider the writ petition.

9.In view of the facts and circumstances, the respondents are directed to repay the recovered amount of Rs.75,308/- to the writ petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

10.Accordingly, this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

29.11.2022

Index : Yes
Internet : Yes
Speaking order : Yes / No
ssr



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S.M.SUBRAMANIAM, J.

SSR

To

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