



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P.No.28231 of 2017

and

W.M.P.Nos. 30352 of 2017 and 1356 of 2018

T. Santhi

...Petitioner

-vs-

1. The Director of Sericulture,
Salem.
2. The Assistant Director of Sericulture,
Sericulture Department,
Udumalaipet.
3. The Principal Accountant General,
Anna Salai,
Chennai - 18.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Second Respondent in proceedings Na.Ka.No.1527/Aa/2011 dated .05.2017 (signed on 11.05.2017; Na.Ka.No.1527/Aa/2011 dated 30.05.2017, Na.Ka.No.1527/Aa/2011 dated 20.07.2017 and Na.Ka.No.1527/Aa/2011 dated 24.08.2017 and quash the same and to direct the Respondents herein to desist from making any recovery from the Petitioner and to disburse all other benefits due and payable to the Petitioner.

For Petitioner	:	Mr. S. Balakrishnan for Mr. M. Ravi
For Respondents	:	Mrs. C. Sangamithirai Special Government Pleader

O R D E R

Heard Mr. S.Balakrishnan, Learned Counsel for the Petitioner and Mrs.C.Sangamithirai, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The husband of the Petitioner, viz., C.Thavamani, while



working as driver in the Department of Sericulture in the Government of Tamil Nadu, had filed the Writ Petition in W.P. No. 8698 of 2011 claiming re-fixation of his pay, which was granted by order dated 09.06.2011 and the monetary benefits had been disbursed to him thereafter. However, on appeal against the said order, the Division Bench of this Court by order dated 08.07.2015 in W.A. No. 1398 of 2011 set aside the same and dismissed the Writ Petition, which has been confirmed by the Hon'ble Supreme Court of India in P.Singaravelan -vs- District Collector, Tiruppur [(2020) 3 SCC 133]. In the interregnum, the said C.Thavamani had died on 05.05.2014 and the Petitioner started to receive family pension as his wife. The Respondents had initiated proceedings against the Petitioner for recovery of the sum of Rs. 2,12,592/- that had been paid to the said C.Thavamani in terms of the order dated 09.06.2011 in W.P. No. 8698 of 2011, but has been set aside in appeal. It is borne from the materials placed on record that after issuing show cause notice to the Petitioner, the Order in Na. Ka. No. 1527/Aa/2011 dated 11.05.2017 has been passed for recovery of the said amount from the family pension of the Petitioner, which has been reiterated in Order in Na.Ka. No. 1527/Aa/2011 dated 30.05.2017, Order in Na. Ka. No. 1527/Aa/2011 dated 20.07.2017 and Order in Na. Ka. No. 1527/Aa/ 2011 dated 24.08.2017 passed by the Second Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said orders and to direct the Respondents to desist from making any recovery from her and make payment of all other benefits due to her.

3. This Court at the time of admission on 06.11.2017 had passed an order of interim stay of the impugned order of recovery alone, which continues to be in force as on date.

4. Learned Counsel for the Petitioner highlights that the said C.Thavamani had died on 05.05.2014 before the disposal of the appeal in W.A. No. 1398 of 2011 on 08.07.2015 and as such, the order passed in that appeal is a nullity. It is further contended that the amount paid to the said C.Thavamani could not be recovered from the family pension of the Petitioner, which is an entitlement received by her in her own right and does not form part of the estate of the deceased employee. It is also pleaded that the case of the Petitioner for exemption from recovery would fall under the categories listed in the decision of the Hon'ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (Whitewasher) [(2015) 4 SCC 334] and that the Government of Tamil Nadu in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 has taken note of the principles laid down in the said decision and has provided the instructions for the manner in which any excess amount paid to Government Servants/Pensioners/Family Pensioners would have to be made.



5. Having due regard to the fact that the said aspects now raised by the Petitioner have not been examined by the Second Respondent in the impugned orders, the Petitioner may make a fresh representation to the Second Respondent by 31.07.2022 in that regard. If such representation is made, the Second Respondent shall after affording full opportunity of personal hearing to the Petitioner, consider each of the contentions raised by her for exemption from recovery and pass reasoned order on merits and in accordance with law following the procedure laid down in the instructions in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 issued by the Government of Tamil Nadu, and the decision taken shall be communicated to the Petitioner under written acknowledgement. It is made clear that the impugned recovery alone shall be continued to be kept in abeyance till a final decision is taken in the matter, if the Petitioner makes such representation by 31.07.2022 to the Second Respondent.

In fine, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1. The Director of Sericulture,
Salem.
2. The Assistant Director of Sericulture,
Sericulture Department,
Udumalaipet.
3. The Principal Accountant General,
Anna Salai,
Chennai - 18.

+1cc to the Government Pleader, S.R.No.17050

W.P. No. 28231 of 2017

SR(CO)
RN(01/06/2022)