



WEB COPY



W.P.No.35266 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.35266 of 2019

and

W.M.P.Nos.36067 of 2019 & 8707 of 2020

O.Oblichetty

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal secretary to the Government,
Finance (Pay Cell) Department,
Chennai 600 009.

2. The Treasury officer,
O/o. District Treasury Collectorate Campus,
Salem 636 001.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in Rc.No.10668 / 2019 / J1 dated 19.11.2019 and quash the same as illegal and arbitrary and directing the 1st respondent to revise the petitioner pension on the basis of the minimum pension as per the 2 (iv) of G.O.Ms.No. 235, Finance Department dated 01.06.2009.

For Petitioner : Mr.K.Jayaraman

For Respondents : Mr.V.Ravi,
Special Government Pleader



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impugned is in violation of the Principles Of Natural Justice. That apart, the excess amount is sought to be recovered after the retirement of the writ petitioner and the petitioner being a pensioner, such a recovery cannot be made.

5. The learned Special Government Pleader appearing on behalf of the respondents objected to the said contentions by stating that the revision of pay was granted erroneously and the authorities have corrected the mistake that occurred in the revision of scale of pay and thus, there is no infirmity and therefore, the writ petition is to be rejected.

6. There is no impediment for the authorities to correct the mistake, even if any occurred while revising the scale of pay of an employee. While correcting the mistake, if the authorities found that an excess salary/pension was paid, then it cannot be recovered from a retired employee after several years. Recovering the excess payment from the pensioners would cause hardship to the pensioners and therefore, the Courts have repeatedly held that in the absence of any misrepresentation or an undertaking by the employees/pensioners, the excess amount paid, cannot be recovered.



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WEB COPY 7. In the present case, the respondent would not be able to establish that there was a misrepresentation on the part of the writ petitioner, who was a pensioner at the time of the revision of the scale of pay. More so, there is no undertaking and further, the petitioner is a senior citizen, receiving a pension and in the event of recovery, hardship would be caused to him.

8. In view of the facts and circumstances, the respondents are directed to correct the scale of pay as applicable to the writ petitioner and accordingly, pay the pension in accordance with the pay rules and the Government Order in force. However, the excess payment already made to the petitioner cannot be recovered pursuant to the impugned order dated 19.11.2019.

9. Accordingly, the impugned order passed by the second respondent, in proceeding Rc.No.10668/2019/J1, Dated 19.11.2019, is quashed to the extent of recovery alone.

10. Accordingly, the writ petitioner stands **partly allowed**. There



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shall be no order as to costs. Consequently, connected miscellaneous petitions are closed

15.11.2022

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Internet : Yes
Index : Yes
Speaking order

To,

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S.M.SUBRAMANIAM, J.

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