BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.09.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

W.P.(MD).No.23433 of 2015
and
M.P.(MD).Nos.1 and 2 of 2015 and W.M.P.(MD).No.3083 of 2016

V.R.Geetha ... Petitioner

Vs.

1.The Principal Accountant General,
Office of the Accountant General,
No.361, Anna Salai,
Chennai -18.

2.The District Treasury Officer,
Madurai,
Madurai District.

3.The Assistant Treasury Officer,
Periyoor,
Madurai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.Nil 2015, dated 15.10.2015 passed by the third respondent herein to quash the same as illegal and consequently directing the third respondent not to deduct any amount from the petitioner's pension account for alleged wrongful calculation, in which the petitioner is no way responsible.

For Petitioner	: Mr.K.A.Thirumalaiappan
For R1	: Mr.P.Gunasekaran
For R2 & R3	: Mr.D.Gandhiraj Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.Nil 2015, dated 15.10.2015, passed by the third respondent and to quash the same as illegal and consequently direct the third respondent not to deduct any amount from the petitioner's pension account for alleged wrongful calculation, in which the petitioner is no way responsible.

2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher at Government Girls High School in Solavanthan, on 25.06.1970. After 32 years of service, she retired from service on attaining the age of superannuation ie., on 30.06.2002. At the time of retirement, her salary was Rs.7,700/- and pension was fixed at Rs.3,850/- vide P.P.O.No.C109095/EDG. She

was getting Rs.20,425/- as pension. On 30.10.2015, the third respondent deposited a sum of Rs.17,385/- as monthly pension, instead of Rs. 20,425/-. A notice in Na.Ka.No.Nil 2015, dated 15.10.2015, was sent stating that there was an excess payment of pension to the tune of Rs. 2,92,947/-. The learned counsel for the petitioner relying on the order passed in similar matter in W.P.(MD).No.23115 of 2015, submitted that the order of recovery has to be set aside. He further submitted that the petitioner has retired from service and the recovery is made after retirement, which is impermissible. Therefore, this Writ Petition. The relevant portion of the order in W.P.(MD).No.23115 of 2015 reads as follows:

> "*12. Considering the legal principles as well as the precedent settled by the Apex Court, this Court is of the considered opinion that even though the excess payment of salary / pension cannot be recovered from the Group III and Group IV employees as well as from the retired employees, the excess payment shall be recovered from the officials, who are all responsible and accountable for the erroneous fixation of pay or excess payment of salary / pension / other monetary benefits. The scope of legal principles is to be stretched in order to protect the tax payers' money. The legal principles settled by the Hon'ble Supreme Court in this regard are not to recover the excess payment paid to the Group III and Group*

IV employees. However, one has to consider that whether such taxpayers' money can be allowed to be spent in such a way. Judicious way of spending the taxpayers' money is the constitutional mandate. The State and the executives are duty bound to protect the tax payers's money is impermissible under the Constitution of India. With this perspective, this Court has to adopt a pragmatic approach to find out a solution to make good the financial loss occurred to the tax payers' money. Undoubtedly, as per the legal principles settled by the Apex Court, the excess payment of salary cannot be recovered from Group III and Group IV employees as well as from the retired employees. However, those excess monetary benefits paid must be recovered from the officials, who had committed negligence, lapse or dereliction of duty in the matter of payment of excess monetary benefits to the employees and those officials are to be held responsible. That is the rule of law."

3. In response, the learned counsel appearing for the respondents, especially the first respondent submitted that the petitioner was rightly paid Rs.7,700/- as pension. She was drawing a sum of Rs.3,850/- as pension and that was revised at Rs.8,701/-, as per the 5th Pay Commission recommendation. She made a representation through the petition dated 11.07.2012, to the Headmaster, Government Boys Higher Secondary

School, Elumalai, to revise her pension to Rs.10,500/- as per Para 2 (VI) of G.O.No.235, vide Government Letter No.51051/PC/2009-1, dated 06.10.2009 and Government Letter No.63305/PC/2010-2, dated 08.11.2010. This Government Order and benefits given under Letters are not applicable to the petitioner for the reason that her pay and pension was rightly fixed, as per the 5th Pay Commission recommendation. However, on the basis of the representation, her pension was revised from Rs.8,701/- to Rs.10,500/-, on the basis of the revised pay scale of Rs.15600-39100+5400 G.P., with effect from 01.01.2007. The corresponding pay scale for petitioner's post of Secondary Grade Assistant in the time scale of Rs.5900-200-9900/-, as per revised pay scale as on 01.01.2006 is Rs.9300-34800+4500 G.P. Only on the basis of the wrong representation made by the petitioner, the pension was revised.

4. Considered the submissions and perused the records.

5. In the case before hand, the petitioner was solely responsible for the change in the pension, resulting in excess payment. No doubt that in the case of ***State of Punjab vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334***, the Hon'ble Supreme Court has held as follows:

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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 for outweigh the equitable balance of the employer's right to recover".

6. However, the facts and circumstances of the case has to be considered. In the case before hand, the petitioner had retired on attaining the age of superannuation in 2002. She submitted a representation to the Headmaster, Government Boys Higher Secondary School, Elumalai, for enhanced pension, on the basis of the pay scale of Rs.15600-39100+5400 G.P., which is not applicable to the petitioner. The petitioner's pay scale was Rs.9300-34800+4500 G.P. Therefore, this Court finds that the revision of pension from Rs.8,701/- to Rs.10,500/- is not correct. However, considering the order passed in the aforesaid W.P.(MD).No.23115 of 2015 and that no opportunity was given to the petitioner before ordering recovery, this Court directs the third respondent to issue show cause notice to the petitioner, calling for an explanation and the petitioner is directed to offer her explanation within a period of one month from the date of receipt of a show cause notice and after receiving the petitioner's explanation, the authorities concerned is directed to pass appropriate orders, in the manner known to law, as per Pay Rules and Government Orders in force. Accordingly, this Writ

Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

02.09.2022

Index : Yes/No
Internet: Yes/No
akv

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G.CHANDRASEKHARAN,J.

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