



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.21494 of 2019 and

W.M.P(MD).No.2582 of 2022

N.Ganapathy

... Petitioner

Vs.

The Senior Branch Manager,
O/o.The Senior Branch Manager,
Bank of India,
Mandapam Branch,
Ramanathapuram District.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order of Recovery in REF.No. MANP/COM/-18-19/76 dated 20.02.2019 and consequential impugned Order in REF.No.MANP/COM/-19-20/13 dated 10.05.2019 on the file of the respondent and quash the same as illegal and consequently direction directing the respondent to refund the Recovery Amount which was made from the petitioner's Pension Account from June 2019.

For Petitioner : Mr.L.Pinaygash

For Respondents : Mr.M.Senthil Kumar

O R D E R

The order of recovery dated 20.02.2019 and the consequential order dated 10.05.2019 are passed without providing any opportunity to the petitioner, who is a pensioner.

2. The petitioner was discharged from Army on 01.05.1989 on medical grounds with disability, and he is a pensioner and aged about 73 years. The impugned order of recovery has been issued by the respondent/ Bank of India, based on the E-mail communication from CPPC, Defence for recovery of excess pension payment paid from January 2006 to December 2018, as per the Circular. The excess



payment of pension was made, pursuant to the wrong fixation of pension to the petitioner. There is no mis-representation or otherwise on the part of the petitioner in the matter of fixation of pay and pension. Under these circumstances, the amount of pension paid in the year 2006 onwards cannot be recovered, now after a lapse of several years, more specifically, when the petitioner is aged about 73 years. In the event of recover such excess amount, the same would result in hardship to the pensioner as he has to take care of his medical expenditure and the livelihood. The Hon'ble Apex Court of India held that even in case of excess payment to the pensioner, the same cannot be recovered after several years. However, any mistake or error in the fixation of pay or pension shall be corrected by the Competent Authorities and correct payment of pension is to be made prospectively.

3. In the present case, the petitioner is receiving the pension through respondent Bank, who in turn issued the impugned order based on the E-mail communication from CPSC, Defence, for recovery of excess payment, more specifically, the excess payment paid to the petitioner from January 2006 to December 2018.

4. This being the factum, the Hon'ble Supreme Court held that the excess payment, if at all paid to the petitioner, cannot be recovered after several years. In the present case, the petitioner being a senior citizen, is aged about 73 years. Hence, in the event of recover such excess payment paid to the petitioner, it would cause great hardship to him. Therefore, the order passed by the respondent is quashed and the respondent is directed to re-fix the pay and pension as applicable to the petitioner, and disburse the correct pension. Further, the excess payment already made, cannot be recovered.

5. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Ssb



To

The Senior Branch Manager,
O/o.The Senior Branch Manager,
Bank of India,
Mandapam Branch,
Ramanathapuram District.

+1 CC to M/s.M.SENTHILKUMAR, Advocate (SR-9640[F] dated
03/03/2022)

ORDER MADE IN
W.P.(MD) No.21494 of 2019
02.03.2022

KVL/12.03.2022/3P/3C