BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 15.03.2022
DELIEVERD ON: 13.04.2022
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.3671 of 2016
and
W.M.P.(MD).Nos.3291 and 6476 of 2016

D.Kanthimathi (Died)

D.Venkataraman ... Petitioner

(Petitioner substituted vide Court order dated 01.02.2022 in W.M.P.(MD).No.18822 of 2021 in W.P.(MD).No.3671 of 2016)

Vs

1.The Directorate of Collegiate Education,
Nungambakkam,
College Road,
Chennai.

2.The Joint Director of Collegiate Education,
Madurai Region,
Madurai.

3.The Director of Treasuries and Accounts,
Panagal Building,
No.1, Jeenis Road,
Saidapet,
Chennai - 15.

4.The District Treasury Officer,
Madurai District Treasury,
Collector Office Building,
Madurai.

5.The Treasury Officer,
Madurai - 625 020.

6.Madura College,
Represented by its Secretary,
Madurai - 11. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents 4 and 5 from reducing the family pension and direct the respondents 2 to 5 to continue to pay the pension as per the proceedings RC No.4097/2015/J2 dated 18.05.2015 issued by the fourth respondent and refund the amount recovered from the petitioner from her family pension with effect from August 2015.

For Petitioner : Mr.M.Saravanan

For R-1 to R-5 : Mr.V.Omprakash
Government Advocate (Civil Side)

For R-6 : No appearance

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O R D E R

This Writ Petition has been filed for Mandamus forbearing the fourth and fifth respondents from reducing the family pension and direct the respondents 2 to 5 to continue to pay the pension as per the proceedings R.C.No.4097/2015/J2 dated 18.05.2015 issued by the fourth respondent and refund the amount recovered from the petitioner from her family pension with effect from August 2015.

2.The brief facts of the case are that the petitioner's husband retired from the sixth respondent Aided College on 30.06.1984 and he worked in the sixth respondent College for fourteen (14) years and prior to that he served in Saurashtra Higher Secondary School which is an aided School from 07.06.1952 to 30.06.1970 for 20 years 24 days. His service in the sixth respondent College is from 01.07.1970 to 30.06.1984. Thus, totally he had put in 34 years of qualifying service and eligible for pension. On the retirement, the sixth respondent College forwarded the pension papers to the second respondent and his basic pension was fixed at Rs.11,300/- and during his life time he received the same. The petitioner's husband died on 11.02.2015 leaving behind the petitioner and their children as legal heirs. After his death, the petitioner is receiving the family pension of Rs.6780/- which is the basic family pension vide order dated 18.05.2015 in R.C. No.4097/2015/J2 and the total pension was fixed at Rs.14,041/-. But subsequently vide proceedings dated Na.Ka.No.487/J1/2015 dated 09.09.2015, the fifth respondent has informed the petitioner that an excess pension has been paid to the deceased husband as per the Annual Audit Report and therefore the excess amount would be recovered.

3.The contention of the petitioner is that on 25.09.2015, the petitioner's son met the fifth respondent in person and requested him to furnish the details of the excess payment. He has been informed that the pension had been fixed for Rs.5,000 from 01.04.1999, Rs.11,300/- from 01.01.2007 and family pension of Rs.3000 from 01.04.1999 and Rs.6780/- at the time scale of pay of

Rs.10,000-325-15,200 which is incorrect. The respondents informed that the fixation should be in the time scale of Rs.8000-275-13500 and there is an excess payment of Rs.3,11,435/- and there is a direction to refix the pension to Rs.6219/- and recover the excess. The petitioner submitted a written representation on 25.09.2015 requesting the respondents to furnish the documents relied on by the respondents to arrive the calculation in the proceedings dated 09.09.2015. The fifth respondent has started recovering the amount from the petitioner's family pension from August 2015 without issuing any order or notice. This Court has granted an interim stay for recovery in W.M.P. (MD). No. 3291 of 2016 dated 22.02.2016.

4.The respondents have filed Vacate Stay petition along with counter. In the counter, it has been stated that the petitioner's husband namely V. Dhandabani who retired from service as Professor on 30.06.1984 was receiving service pension in PPO.No.T48162 with effect from 01.07.1984 and subsequently he died on 11.02.2015. The petitioner's husband is entitled to the scale of pay of Rs.12000-420-8300 as on 01.01.1996. As per the recommendations of UGC, the upgraded Professors are entitled to the pay scale of Rs.37400-67000-A GP Rs.9000/-, if they had put in three years of service in the Selection Grade but the scale of pay of the petitioner's husband for the post held at the time of his retirement is Rs.700-40+1100+50-1300-1600. The next respective pay bands are as follows:

i) Rs.2200-75-280-100-4000
ii) Rs.8000-275-13500
iii) Rs.15600-39600 GP 6000

The revised scale of pay band of Rs.37400-67400-9000 should have previous corresponding scale of pay band of Rs.1200-50-1300-60-1900. This scale of pay does not match with the scale of pay drawn by the petitioner's husband at the time of retirement.

5.The respondents further submitted as per G.O.Ms.No.106 Higher Education (H1) Department dated 14.05.2015, the pension of the old UGC pensioners who retired from service prior to 1986 in the post of Lecturer (Selection Grade) and completed total service of 19 years and above, is entitled to stepped up to 50% of minimum pay in the pay band of Rs.37400-67000+G.P. 9000 at Rs.23200 and for the family pension of 30% minimum pay band at Rs.13920/-. This stepping up of pay is applicable to the pensioners whose pay band is Rs.1200+50+1300+60+1900. Hence the concessions extended in G.O.Ms.No.106 Higher Education (H1) Department dated 14.05.2015 is not applicable to the petitioner's husband. It is submitted by the respondents that the petitioner's husband is eligible for the time scale of pay of Rs.8000-275-13500 and 50% of the service pension is Rs.4000 only. But the second respondent has erroneously fixed the pension at the time scale of Rs.10,000-325-15200 with service pension of Rs.5000/- as per G.O.Ms.No.200 Finance (PC) Department dated 18.05.1999. The said pay was later revised as per G.O.Ms.No.235 at Rs.11300 with effect from

01.01.2007. During the special inspection conducted by the authorities of the Directorate of Treasuries and Accounts, it was found that the petitioner's husband pay has been fixed erroneously and paid an excess payment to the tune of Rs.3,04,691 as service pension and Rs.6744 as family pension. Thus, totally altogether an excess payment of Rs.3,11,435/- was paid. A notice containing the details of the excess payment was sent to the petitioner vide Reference No.487/J1/ 2015 on 09.09.2015 along with the working sheet. Sufficient time was given to the pensioner to represent her case and to repay the over payment drawn by him but there was no response from the petitioner. As per procedure laid down under G.O.Ms.No.702 Finance(P) Department dated 07.10.1988, the Treasury authorities are competent to recover the Government dues including over payment of pension/family pension can be recovered from the pensioner / family pensioner. The pension can be revised as Rs.6219 as per G.O.Ms.No.579. The deceased employee is eligible for 20% of additional pension as per G.O.Ms.No.42 dated 15.02.2011. An increase of 20% basic pay with D.A. is granted to the pensioners who are in the age of 80-85 years with effect from 01.01.2011. Hence the pensioner is eligible for the arrears of pension amount of Rs.2,52,336/-. This arrear amount was adjusted towards the over payment of the pension. The recovery of Rs.7416/- was commenced from the month of October 2015 and so far three installments have been adjusted. So far, a total amount of Rs.2,74,584/- was adjusted and the balance of over payment of Rs.36,851/- is to be recovered from the petitioner in five installments starting from January 2016. At this stage, the petitioner has filed this Writ Petition and the Hon'ble High Court has granted interim stay dated 02.02.2016. Since the concessions laid down in G.O.Ms.No.106 Higher Education (H1) Department dated 14.05.2015 is not applicable to the deceased pensioner. Hence the over payment is recoverable. The petitioner was already issued the notice dated 09.09.2015 along with detailed calculations and the petitioner was granted adequate opportunity to represent her case. Therefore, the petitioner cannot allege violation of principles of natural justice. The respondents also enhanced the pension in which the deceased pensioner was entitled under G.O.Ms.No.42. The enhanced pension was adjusted towards the recoverable pay and the balance payable is Rs.36,851/-. Therefore, the petitioner cannot claim any illegality in the recovery order.

6.Heard Mr.M.Saravanan, learned counsel for the petitioner and Mr.V.Omprakash, learned Government Advocate (Civil Side) for respondents 1 to 5 and there is no appearance on behalf of the sixth respondent.

7.The learned counsel for the petitioner relied on ***State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334,*** wherein, it has been held that the recovery of excess payment from retired employees, which mistake is attributable to the employer, cannot be recovered. Furthermore, the belated recovery of pension, when the excess payment was made more than five years back is also not recoverable. Hence the petitioner submitted that the impugned recovery order is illegal and prayed to allow the Writ Petition.

8.It is seen from the records that the concessions were granted through G.O.Ms.No.106 Higher Education (H1) Department dated 14.05.2015 wherein the pension of the old UGC pensioners who retired from service prior to 1986 in the post of Lecturer (Selection Grade) and completed the post for 19 years and above and the stepped up pay is applicable to the pensioners of pay band is Rs.1200+50+1300+60+1900. The petitioner's husband was drawing the last drawn salary at the time of his retirement was only Rs.700-40-1100-50-1300. The petitioner's husband is not entitled to Rs.1200-50-1300-60-1900. The second respondent without taking this factor into consideration has wrongly fixed as Rs.1200-50-1300-60-1900. The respondents relied on G.O.Ms.No.702 Finance (P) Department dated 07.10.1988, wherein the Treasury authorities are empowered to recover the Government dues including the over payment of pension / family pension. Based on this, the family pension of the petitioner was revised as Rs.6,219/- as per G.O.Ms.No.579.

9.The deceased pensioner Dhandapani is eligible for 20% additional pension as per G.O.Ms.No.42. Therefore, an increase of 20% basic pay with D.A. is granted to the pensioners who are in the age of 80-85 years with effect from 01.01.2011. Hence the respondents have conferred the arrears of pension amount of Rs.2,52,336/-. Admittedly, the respondents have calculated this hike from April 1999. However, based on the incorrect fixation, the petitioner is liable to pay Rs.3,11,435/-. Therefore, the respondents had adjusted Rs.2,52,336 and the balance amount of Rs.59,099/- is recoverable in the three installments. Therefore, the respondents recovered Rs.2,74,584/-. However, the balance of Rs.36,851/- has not been recovered. Any excess payment was made more than five years back cannot be recovered as per *White Washer case*. In the present case, the concession was granted based on G.O.Ms.No.106 dated 14.05.2015 and the respondents have calculated from April 1999. Admittedly, this payment was granted based on G.O.Ms.No.106 dated 14.05.2015 and the recovery order was passed on 09.09.2015. When the increase of 20% was conferred by the respondents, then the respondents have every right to recover the wrongly conferred amount.

10.Therefore, this Court is of the considered opinion that the concessions were granted on 14.05.2015 and the recovery order was passed on 09.09.2015, of course, it is revised from the year 1999. Therefore, the plea of excess payment made more than five years cannot be accepted. The concession was granted by taking previous period and that cannot be termed as excess payment for more than five years. The petitioner is eligible for 20% additional pension as per G.O.Ms.No.42 and the respondents have rightly conferred the additional pension of Rs.2,52,336/-. Admittedly, this additional pension was also taken into account from the date of 01.04.1999. Therefore, this Court holds that the adjustment of Rs.2,52,336/- is legally valid. The respondents have recovered Rs.7,416/- from October 2015 for the balance amount and three installments have been recovered which is totally Rs.2,74,584/-. The balance amount payable only is Rs.36,851/-. Since the second respondent has acted negligently and has given stress to the petitioner. This Court is of the considered opinion that the balance of Rs.36,851/- cannot be recovered. The petitioner has relied on *White Washer case*. However, subsequently the Hon'ble Supreme Court while referring *White Washer case* has held that as per the judgment of Hon'ble Apex Court *in the case of High Court of Punjab & Haryana Vs. Jagdev Singh reported in AIR 2016 SC 3523,* if there is any rule or any undertaking for recovery or if the rule permits for recovery, if there is any excess payment, then the respondents have every right to recover. In the present case the respondents are empowered to recover as per G.O.Ms.No.702 Finance (P) Department dated 07.10.1988.

11. Therefore, this Court is passing the following orders:

(i) The recovery amount is adjusted from the 20% additional pension as per G.O.Ms.No.42 to the tune of Rs.2,52,336/- is legally valid.

(ii) The recovery of Rs.7416/- from the October 2015 for three installments is also legally valid.

(iii) However, the respondents are restrained from recovering the balance amount of Rs.36,581/-.

(iv) The respondents are directed to refix the correct pension amount applicable to the petitioner and pay the said pension thereafter.

12. With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar(CS.I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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+1 CC to M/s.SPL.GP. (SR-18585[F] dated 13/04/2022)

+1 CC to M/s.M.SARAVANAN, Advocate (SR-18898[F] dated 18/04/2022)

Order made in
W.P.(MD)No.3671 of 2016
Date:13.04.2022

SA(18.05.2022) 7P 8C