BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.02.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD) No.24616 of 2019
and
W.M.P.(MD) Nos.21273 of 2019 & 965 of 2020

S.Padma ... Petitioner

vs.

The Assistant Treasury Officer
Sub-Treasury Office
Usilampatti, Madurai District ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records passed by the respondent herein in Na.Ka.No.479/2019/Aa1, dated 17.10.2019 and the consequential impugned proceedings Na.Ka.No.497/Aa1/2019, dated 09.11.2019 and quash the same and consequently direct the respondent herein to reimburse the recovered amount to the petitioner.

For Petitioner : Ms.M.Padmavathy
For Respondent : Mr.N.Satheesh Kumar
Additional Government Pleader

O R D E R

The order of recovery passed by the respondent is under challenge in this writ petition.

2. The petitioner is a family pensioner. Her husband C.Soundararajan was serving as Deputy Block Development Officer and he retired from service on 31.12.2010. He died on 22.07.2016 and thereafter, the petitioner is receiving family pension.

3. The learned counsel for the petitioner mainly contended that based on the audit objection, the alleged excess amount of family pension paid to the petitioner is sought to recovered. However, the petitioner is not responsible for any fixation or otherwise and she has not misrepresented her case. Thus, any excess amount, even if paid, cannot be recovered from the family pensioner.

4. No doubt, recovery from the family pensioner may not be permissible, even in case excess amount has been paid. However, the facts and circumstances of the case are relevant for the purpose of taking a decision. The Honourable Supreme Court, in catena of decisions, has ruled out that even in case of excess payment, the same cannot be recovered from the retired employees.

5. The learned Additional Government Pleader appearing for the respondent contended that it is not the case of wrong fixation of pay. There is no error in the fixation of pay and the respondent has no proposal to refix the pension or family pension as admissible to the deceased employee. However, the case of the petitioner is distinct in view of the fact that the fixation of pay was correctly done and while transferring the arrears of pension through ECS, the mistake had occurred in the place where the transfer of money took place. Therefore, the case of the petitioner cannot be compared with other cases, where based on the audit objections, recovery was imposed. The objection was raised only with reference to the transfer of money erroneously made.

6. This Court is of the considered opinion that admittedly, there is no wrong fixation of pay. There is excess payment of pension or family pension. It is a wrong transfer through ECS and the Government money has been transferred to the petitioner's account. If these errors are permitted, then it will result in unjust enrichment of the person, who received excess amount. No doubt, the petitioner being an illiterate woman, may not be in a position to identify the correctness or otherwise. However, the Authority competent found that while transferring the money, it was erroneously transferred in excess and it is no way connected with the fixation of pay or excess grant of pension or family pension.

7. Certain technical or mechanical errors occur, while transferring the money and the excess money has been transferred to the employee. There is no wrong in correcting such errors and recovering the excess amount. Even for an example, in a Bank account, if any amount was credited in excessive in the account of the account-holder, then he is bound to repay the same to the Bank. There cannot be any unjust enrichment from the Public Organizations.

8. In such view of the matter, this Court is of the opinion that the petitioner, in all fairness, is expected to pay back the excess amount to the Government's account as it is not connected with fixation of pay or excess payment of pension or family pension.

9. At this juncture, the learned Additional Government Pleader made it clear that the family pension as admissible to the petitioner will be regularly paid. The family pension amount of the petitioner is Rs.15,020/-. The Authority competent themselves, considering the case of the petitioner / family pensioner, has proposed to recover a small amount from the monthly pension and the family pension will be paid as it is and the recovery will be made only from the dearness allowance only.

10. Accordingly, the writ petition is devoid of merits and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

The Assistant Treasury Officer,
Sub-Treasury Office,
Usilampatti, Madurai District.

+1 CC to M/s.SPL GP (SR-6819[F] dated 17/02/2022)

W.P.(MD) No.24616 of 2019 and
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RD(28.02.2022) 3P 3C