



W.P.No.18456 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.18456 of 2011
and M.P.No.1 of 2013

M.Ranganayaki

... Petitioner

Vs

1.The Assistant Treasury Officer,
Attur, Salem District.

2.The Headmaster,
Government Higher Secondary School,
Chokkanathapuram, Attur, Salem District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st respondent herein in Na.Ka.No.23/2011/E dated 05.07.2011 and quash the same and direct the respondents to refund the amount already recovered from the petitioner with interest.

For Petitioner : Mr.P.Rajendran

Page No: 1/7



W.P.No.18456 of 2011

For Respondents : Mr.S.Ravichandran
Additional Government Pleader

ORDER

This Writ Petition had been filed challenging the order of recovery that has been made under the premise that there is a wrong calculation of pensionary benefits.

2. Heard Mr.P.Rajendran, learned counsel for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondent0s.

3. The learned counsel for the petitioner submits that the petitioner is the wife of the retired employee against whom the order impugned had been passed. The main contention of the learned counsel for the petitioner is that no notice was issued prior to the order impugned in this Writ Petition.

4. A Counter affidavit had been filed by the 1st respondent herein indicating that the order of recovery had been issued pursuant to the

Page No: 2/7



W.P.No.18456 of 2011

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consent letter issued by the petitioner that if any excess amount is paid to which the petitioner was entitled to, the same could be recovered.

5. It is pertinent to note that while granting pension, a consent letter is always obtained from the respective pensioner. Such consent letters are being taken from the concerned pensioner, that does not mean that when there is an order detrimental that is sought to be made, the concerned pensioner should not be put on notice. In the present case, the petitioner was kept in dark for atleast five months where she had been granted reduced pensionary benefits. Only after a period of 5 months, this order has been passed, which is not in dispute by the respondents.

6. The calculation of pension has been admitted to be made on a wrong calculation that had been made only at the end of the respondent and the petitioner was in no way responsible for such wrong calculation. Therefore, the law laid down by the Hon'ble Apex Court in

Page No: 3/7



W.P.No.18456 of 2011

WEB COPY

the case of ***State of Punjab and Others Vs Rafiq Masih & Others*** reported in ***(2015) 4 SCC 334*** (White washer's case) is squarely applicable to the facts of the present case.

7. In view of the aforesaid conclusion, I am constrained to set aside the order impugned in this Writ Petition. However, the respondents are at liberty to put on notice, the petitioner as to the reasons why the petitioner is entitled to only for a reduced pension than that she is being paid and if any such notice is issued to the petitioner, the petitioner shall respond to such notice within a period of three (3) weeks from the date of receipt of such notice and submit her explanation. Thereafter, the respondents are at liberty to pass appropriate orders fixing the correct pension that the petitioner would be entitled to. However, it is made clear that there shall be no order of recovery of the pension that had been made to the petitioner earlier. Till such exercise is carried out, the petitioner would be entitled to receive the sum of pension that she is receiving as on today.

Page No: 4/7



WEB COPY



W.P.No.18456 of 2011

8. In fine, the order impugned in this Writ Petition is set aside and this Writ Petition is allowed with the aforesaid liberty to the respondents. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.11.2023

gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

1.The Assistant Treasury Officer,
Attur, Salem District.

2.The Headmaster,
Government Higher Secondary School,
Chokkanathapuram, Attur, Salem District.

Page No: 5/7



WEB COPY



W.P.No.18456 of 2011

K.KUMARESH BABU,J.

Gba

W.P.No.18456 of 2011
and M.P.No.1 of 2013

Page No: 6/7



WEB COPY



W.P.No.18456 of 2011

28.11.2023

Page No: 7/7