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W.P.No.9001 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.9001 of 2018
& WMP No.10849 of 2018

G.Swarna Agness (alias) Swarnammal

... Petitioner

Vs.

1. The Government of Tamil Nadu
represented by the Secretary to Government
School Education Department,
Fort St. George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600 006.
3. The District Educational Officer,
Saidapet, Chennai – 600 015.
4. The Commissioner Treasury and Account Department,
Chennai – 600 015.
5. Assistant Treasury Officer,
Sub-Treasury, Tambaram,
Chennai – 600 045.
6. Accountant General (Accounts & Entitlements),
Tamil Nadu, 361, Anna Salai,
Teynampet, Chennai – 600 018.

.... Respondents



Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 5th respondent in relation to his proceeding issued in Ref.No.1794/2017/A1, dated 28.12.2017 and quash the same and issue a consequential direction to the respondents to allow the petitioner to get the pension and family pension which was disbursed before the impugned proceedings continuously and to direct the respondents refund the amount which has been already recovered from the petitioner.

For Petitioner : Mr.K.P.Sathishkumar

For Respondents : Mr.R.Neethi Perumal
Government Advocate – R1 to R5
Mr.S.Balaji - R6

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the 5th respondent, Assistant Treasury Officer, Sub-Treasury, Tambaram in respect of proceedings dated 28.12.2017 and quash the same and issue a direction to the respondents to permit the petitioner to get pension and family pension which was disbursed before the impugned proceedings. The petitioner also seeks refund of the amount which had already been recovered from the pension of the petitioner.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner, a senior citizen, was appointed as full time pre-vocational instructor in CSI Middle School at Tambaram on 27.01.1977. She worked till



30.11.1995 when she retired on attaining the age of superannuation. She was granted pension after commutation of pension. She was also getting family pension consequent to the death of her husband who worked as clerk in Corley High School at Tambaram.

3. The petitioner claimed that a portion of her pension and family pension were reduced from July, 2017. She made enquiries and obtained information under the Right to Information Act, 2005. It was stated that pension of Rs.2,550/- was being paid instead of Rs.1275/- for the period from January, 2006 till June, 2017 resulting in the excess payment of Rs.5,96,908/- It had been stated that the said proceedings of the Assistant Treasury Officer, Sub-Treasury, Tambaram was dated 28.12.2017 and the same was also enclosed along with the information received. The petitioner claimed that this really put her to much hardship and stated that the said order should be interfered with and set aside by this Court.

4. The third respondent had filed a counter affidavit wherein it had been stated that the petitioner is drawing superannuation pension consequent to her retirement on 30.11.1995 and family pension due to the death of her husband while in service on 02.11.1976. It had been stated that the Schools in Tambaram had been transferred to the control of the District Educational Office at St.Thomas Mount. No specific statement was made whether



recovery was proper or not.

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5. The fifth respondent, Assistant Treasury Officer, Sub-Treasury, Tambaram had also filed a counter affidavit. The order of the said respondent is impugned in this Writ Petition. It was stated that the petitioner was working as Vocational Instructor in CSI Middle School at Tambaram and was receiving pension in the office of the second respondent, Director of Elementary Education at Chennai. It was submitted that during the verification of records of Additional Sub-Treasury Office at Tambaram, it was found that the payment made to the petitioner was in excess and therefore recovery orders were passed to recover the excess amount paid to the petitioner. It had been stated that this fact has also been communicated to the petitioner herein. It was also stated that the excess payment paid to the petitioner was to the tune of Rs.5,93,908/-.

6. It had been stated that the petitioner had been drawing two pensions, one from her own service and the other family pension on account of the death of her husband. It had been stated that the service pension was Rs.1275/- and the family pension was also Rs.1275/- and a total sum of Rs.2550 was being paid to the petitioner herein.

7. It had been stated that the actual fixation should be Rs.1275/- and on revision as per G.O.Ms.No.235 Finance Department dated 01.06.2009, the



correct fixation would be Rs.3,050/-. It had also been stated that consequent to the implementation of the pay commission, the pension equivalent to the pre-revision amount of Rs.2,550/- was taken to calculation instead of Rs.1275/- and therefore there had been excess payment made to the petitioner herein. It had been stated that it was this amount which is sought to be recovered from the petitioner.

8. The sixth respondent had also filed a counter affidavit wherein it had been stated that the Accountant General is the nominated Accounts Officer of the Government of Tamil Nadu who was vested with the responsibility to issue authorisation for pensionary benefits of the employees. It had been stated that recovery proceedings had been issued by the said respondent leading to recovery of pension/family pension. It had been stated that the recovery is proper and that the petitioner had gained advantage by improper additional and excess pension paid for a period of nearly 10 1/2 years.

9. Heard the arguments of learned counsel for the petitioner and the learned counsel for the respondents.

10. Learned counsel for the petitioner placed reliance on the judgment in the case of *State of Punjab V. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334 and stated that taking into account the age of the petitioner herein, the recovery would be extremely iniquitous. It had been further



contended by the learned counsel that the petitioner was not put to notice and her explanation was not sought.

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11. This contention has been specifically contested, denied and disputed on the side of the respondents. It had been stated that notice was issued and only after receipt of explanation from the petitioner, recovery proceedings had been passed.

12. It was also contended that the judgment relied upon by the learned counsel for the petitioner would not be applicable to the petitioner herein, since she is drawing two pensions, one on account of her own service and the other on account of the death of her husband who had also worked as a clerk in the Corley High School, Tambaram. It was also stated that the total amount of Rs.2550/- (Rs.1275 + Rs.1275) was taken into account for fixation whereas only one should have taken for fixation and since the total amount of Rs.2550/- had been taken into consideration, there had been an excess pension paid to the petitioner herein.

13. These are facts which are not directly denied or disputed by the petitioner herein. It is clear that the petitioner, as a double pensioner, had got the benefit of getting excess pension paid for a period of nearly 10 1/2 years from January, 2006 to June, 2017. Once that is accepted, there is an obligation on her to repay the said amount. The contention of the petitioner



that the said recovery is iniquitous can be addressed by spreading the recovery in instalments.

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14. In view of these facts and since calculation has to be made only by the fifth respondent and it is stated that she had also given explanation prior to passing of the recovery proceedings and the entire issue rests on facts and figures, it would be extremely inappropriate on the part of this Court to once again re-visit the said calculation.

15. It was contended that the amount was directed to be recovered in 120 instalments, of which, 7 instalments have been paid and there are 113 instalments still to be recovered from the pension of the petitioner herein. I direct that the number of instalments should be further spread over to 120 instalments instead of 113 instalments.

16. Observing as above and retaining the impugned order of recovery, this Writ Petition stands dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No

12.09.2023



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C.V.KARTHIKEYAN,J.

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