



WP.No.30020/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.30020/2016 & WMP.Nos.26025/2016 & 38445/2016

G.Lakshmi Kaanthan

... Petitioner

Versus

1.The Director of Treasuries
Saidapet, Chennai 600 015.

2.The Treasury Officer
Villupuram District, Villupuram.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.4060/2016/C2 dated 18.07.2016 and quash the same and consequently direct the respondents herein to forthwith repay the recovered amount to the petitioner herein.

For Petitioner : Mr. K.Raja

For Respondents : Mr.U.Baranidharan, AGP



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ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking interference with an order of the 2nd respondent, Treasury Officer, Villupuram, in proceedings Na.Ka.4060/2016/C2 dated 18.07.2016 and to quash the same and to direct the respondents to repay the recovered amounts to the petitioner herein.
- (2) The petitioner is a beneficiary by receiving the Family Pension consequent to the services rendered by his wife who retired as Nursing Superintendent Grade-II in the District Government Headquarters Hospital at Cuddalore, on 31.01.1996. She died on 21.01.2012. The Family Pension had been sanctioned to the petitioner. Quite apart from that, the petitioner was also a Government servant and he is receiving the pension payable to him on account of his service. The petitioner was issued with proceedings dated 18.07.2016, which was less than five years from the date of the death of his wife that excess Family Pension had been paid and it should be recovered in twelve equal instalments. The excess Family



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Pension which the petitioner had received was Rs.77,073/- and the monthly instalment would work out to Rs.6,865/-. The respondents had recovered two instalments amounting to Rs.12,081/-. The balance which they have to recover is Rs.64,992/-.

- (3) In the affidavit filed in support of the writ petition, the petitioner had claimed that he is not aware of the reason why the deduction is sought and also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2015 [4] SCC 334 [State of Punjab Vs. Rafiq Masiah [White Washer]]**. He claimed that the recovery would be iniquitous.
- (4) In the counter affidavit, however, it had been contended that notice had been issued to the petitioner by Rc.No.4060/2016/E2 dated 6.07.2016 and that the petitioner had also come over personally to the office of the respondents on 19.07.2016 and that the petitioner had been explained about the over payment of Family Pension to him consequent to the death of his wife and the nature of the audit objection. The audit objection was that there was a revision which had been made in G.O.Ms.No.174 and the benefit of that revision had



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been applied to the wife, which was not proper and that the pension should have been fixed as per the stipulations in G.O.Ms.No.235. It was therefore stated that the petitioner is not only receiving his own pension, but also additional Family Pension over and above for what he was entitled to.

- (5) The facts are clear. The judgment may not be directly applicable to the petitioner herein in view of the fact that the petitioner is already drawing pension and it is informed by the learned Additional Government Pleader that the petitioner is drawing pension of Rs.37,783/-. It is also contended by the learned Additional Government Pleader that the petitioner is therefore a double pensioner and therefore, it had been contended that the recovery cannot be termed as iniquitous. It had been stated that the principles laid down in the aforementioned judgment would not be applicable to the petitioner herein.
- (6) Very strangely, the petitioner had not disclosed where he had been working and on what ground he is receiving pension in his affidavit. He has not disclosed the Government Department where he had been



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working. That particular fact had been completely suppressed in the affidavit filed in support of the writ petition. The judgment would also apply only to Class III and Class IV employees and there being no indication in the affidavit as to the post in which the petitioner retired and also the Department where the petitioner worked, it can be reasonably presumed that such suppression of factual information is only because the petitioner was not in employment in a past which could be categorised as Class III or Class IV. Therefore, the ratio laid down in that particular judgment, would not be directly applicable to the petitioner herein. Quite apart from that, it is seen that notice had also been served on the petitioner and he had also appeared in person. The only relief that could be granted is to spread out the instalments in view of the stay granted by this Court..

- (7) The amount which is to be recovered in Rs.64,992/-. The respondents have laid down a schedule to recover the same in ten equal instalments. Two instalments had already been recovered.
- (8) A direction is given to the respondents that the amount should be recovered, instead of ten, in twelve equal instalments, which would



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mean that every month, the petitioner herein would have to pay 1/12th of Rs.64,992/-.

- (9) The writ petition stands **dismissed** except for the above observation.
- No costs. Consequently, connected miscellaneous petitions are closed.

05.09.2023

AP
Internet : Yes

To
1.The Director of Treasuries
Saidapet, Chennai 600 015.

2.The Treasury Officer
Villupuram District, Villupuram.



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C.V.KARTHIKEYAN, J.,

AP

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