



W.P.(MD)No.14380 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.14380 of 2019

and

W.M.P(MD)Nos. 16631, 10803 & 10804 of 2019

V.K.Lekshmikutty

... Petitioner

Vs.

1. The Principal Accountant General,
Accountant General Office,
Chennai – 18.
2. The Director of School Education,
Higher Secondary Department,
College Road,
Nungambakkam,
Chennai – 6.
3. The District Treasury,
Nagercoil,
Represented by District Treasurer Officer,
Kanyakumari District.
4. The Chief Educational Officer,
Kanyakumari District,
at Nagercoil.



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5. The Sub-Treasury Officer,
Sub-Treasurer Office,
Vilavancode,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records on the file of the 5th respondent pertaining to its order bearing Na.Ka.No.482/A2/2019, dated 13.05.2019 and to quash the same consequently direct the respondents to pay the family pension, without deducting any amount, as per the Government Order in G.O.No.42 Finance(Pension) Department, dated 07.02.2011.

For Petitioner : Mr.S.C.Herold Singh

For R-1 : Mr.P.Gunasekaran

For R-2 to R-5 : Mr.V.Omprakash,
Government Advocate

ORDER

This writ petition is filed challenging the impugned order, dated 13.05.2019 with consequential relief to pay the family pension, without deducting any amount, as per the Government Order in G.O.No.42 Finance (Pension) Department, dated 07.02.2011.



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2. Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.P.Gunasekaran, learned Counsel appearing for R-1 and Mr.V.Omprakash, learned Government Advocate appearing for R-2 to R-5. Perused the material documents available on record.

3. The contention of the petitioner is that the petitioner's husband had worked as teacher in the Government school and his date of birth is 10.05.1923. However, the respondents have incorporated the date of birth as 01.04.1930. The said mistake has occurred when the original pass book was lost. The respondents have taken the date of birth as 01.04.1930 and has come to the conclusion of excess payment of Rs.91,912/- was granted to the deceased and have issued a recovery order which is impugned in the writ petition. The respondents have recovered a sum of Rs.11,381/- from the petitioner's family pension account. The contention of the petitioner is that the petitioner is now 96 years old and the petitioner's husband has also died. Therefore, she may be granted the relief.

4. The contention of the respondents is that the petitioner is not entitled to the said relief, since the mistake has occurred because of the



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petitioner's husband has disclosed the date of birth as 1923, but in the original records, the date of birth is shown as 1930. Therefore, the petitioner is not entitled to the relief.

5. After considering the rival contentions, this Court is of the considered opinion that the petitioner is now 96 years old, therefore, the respondents shall not recover the excess amount paid to the petitioner. As far as the recovered amount of Rs.11,381/-is concerned, since the petitioner is not entitled to the same, the recovered amount need not be paid to the petitioner. However, the balance amount shall not be recovered by the respondents. However the refix as per law.

6. The second prayer is concerned, as per G.O.No.42 Finance (Pension) Department, dated 07.02.2011, if the employee has crossed 80 years, he is entitled to increase in basic pension. But the respondents have not considered the same in the case of the petitioner, since the excess payment issue was pending. Therefore, this Court is of the considered opinion that the respondents ought to consider the benefit in the case of petitioner's case. Therefore the



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respondents directed to consider in the light of G.O.Ms.No.42 and if the petitioner is entitled to the same shall be disbursed to the petitioner. If not eligible, the respondents shall state the reasons for the same. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of the order.

7. Accordingly, this Writ Petition is allowed in above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

06.06.2023



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.14380 of 2019**

06.06.2023