



W.P(MD)No.12712 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12712 of 2015

and

M.P.(MD)No.1 of 2015

Dharmalingam

... Petitioner

Vs.

1.The Chief Manager,
Indian Bank,
Centralised Pension Processing Centre,
No.66, Rajaji Salai,
Chennai-1.

2.The Branch Manager,
Indian Bank,
Thiruverumbur Branch,
Trichy-13.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the proceedings of the 1st respondent CPPC Vasantha 2015-16 dated 06.07.2015 and quash the same as illegal and forbearing the respondents from deducting the 1/3rd pension amount of the petitioner.

For Petitioner : Mr.S.Muthukrishnan



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For Respondents : S.Devaraj

ORDER

Heard the learned counsel on either side.

2. The petitioner is an ex-service man. He served in an Indian Army from 1956 to 1972. After discharge from army service, he had been receiving his pension from the Sub Treasury Office, Trichy from 1978 through the second respondent. It appears that the date of birth of the petitioner was erroneously mentioned as 13.06.1912 instead of 06.06.1934. It is well settled that a pensioner aged above 80 years is paid enhanced pension. That is how, treating the petitioner's date of birth as 13.06.1912, he was paid the enhanced amount from 01.01.2006 onwards. The computation of the army authority is that an excess amount of Rs.3,85,232/- was paid. By the impugned communication, it was sought to be recovered. The army authorities have marked the copy of their communication dated 14.12.2014 to the petitioner. The petitioner ought to have challenged the same. Instead, he has chosen to challenge only the communication dated 06.07.2015.



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3. The impugned communication is only consequential in nature. Therefore, on the ground of non-joinder of necessary party, the writ petition may have to be dismissed. But the petitioner can very well take advantage of the decision of the Hon'ble Supreme Court rendered in *White Washer Case*. It is not the case of the authority that the petitioner had committed any error. If by mistake an excess amount was paid, it can be recovered. But in the case of pensioners, there cannot be any recovery. Even according to the respondents, the petitioner's actual date of birth is 06.06.1934. The petitioner's counsel is not aware as to whether the petitioner is still alive. In as much as there is nothing on record to show that the impugned orders were passed after complying with the principles of natural justice, on that sole ground, even though the petitioner has failed to implead the army authority as a party respondent, the impugned communication is set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.08.2023

Index : Yes / No
Internet : Yes/ No
rmi

G.R.SWAMINATHAN, J.



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