

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5285 of 2015

and

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

K.Meenakshi Sundari

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Public (Political Pension-IV) Department,
Secretariat, Fort St.George,
Chennai-9.

2.The District Collector,
Collectorate Building,
Madurai.

3.The District Treasury Officer,
Office of District Collector,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order of the 1st respondent in Letter No. 39996/A.O.4/2014-1 dated 06.01.2015 and the consequent order of the 3rd respondent herein in Na.Ka.No. 9996/2013/K 1 dated 04.02.2015 and quash the same and pass such further or other orders.

For Petitioner : Mrs.Vijayakumari Natarajan

For Respondents : Mr.D.Gandhiraj
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2. One Thiru.K.B.Kandasamy was getting freedom fighters pension both from the State Government as well as the Central Government. He went missing in December 1991. Crime No.2010 of 1991 was registered on the file of the D1, Southgate Police Station, Madurai City. The said Kandasamy got married to one Savithri on 07.09.1987. The petitioner was born to Savithri during subsistence of the said wedlock. Savithri passed away on 23.04.1996. Thereupon, Somasundaram, maternal grandfather of the petitioner filed G.W.O.P.No.4 of 1999 on the file of the Family Court, Madurai for appointing him as guardian. OP was ordered on 09.08.2000. In the said O.P, the marriage invitation card was marked as Ex.B1. The copy of the marriage certificate was marked as Ex.B2. The other relevant documents were marked as Ex.B3 to Ex.B8. As the daughter of the deceased freedom fighter, the petitioner was entitled to get pension till so long as she remained spinster. Accordingly, pension was sanctioned. But the Government subsequently realized that an

excess sum of Rs.1,53,000/- was paid and therefore, called upon the petitioner to refund the same. This communication dated 06.01.2015 demanding refund is put to challenge in this writ petition.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the recovery order.

4. The respondents have filed counter affidavit and the learned Special Government Pleader took me through its contents.

5. The stand of the respondents is that due to wrong calculation, excess amount has been paid and that the petitioner was eligible to get the arrears only to the tune of Rs.92,457/-. The learned Special Government Pleader would contend that since the petitioner had illegally enriched herself, the impugned order deserves to be sustained.

6. I carefully considered the rival contentions and went through the materials on record. Even if I assume that there has been wrong calculation, the petitioner cannot be blamed therefor. While sanctioning the arrears of freedom fighters pension, it was the respondent who had done the calculation and made the payment. Having done so, it would be inequitable to order recovery. The Hon'ble Apex Court in the decision reported in *(2015) 4 SCC 334 (State Of Punjab & Ors vs Rafiq Masih (White Washer) and Others)* held as follows:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

7. Respectfully applying the aforesaid ratio, the order impugned in the writ petition is set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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