



W.P.(MD)No.11922 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.11922 of 2016

and

W.M.P(MD)No. 9120 of 2016

R.Vimaladevi

... Petitioner

Vs.

1. The Government of Tamil Nadu, represented
its Chief Secretary to Government,
Secretariat,
Chennai.
2. The Director,
The Director of Treasuries & Accounts,
485, Annasalai,
Nanthanam,
Chennai – 600 002.
3. The Joint Director,
The Joint Director of Treasuries and Accounts,
Tirunelveli.
4. The District Treasury Officer,
The District Treasury Office,
Virudhunagar District,
Virudhunagar.



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5. The Director ,
The Director of Pension,
D.M.S.Building, Chennai – 600 006.
6. The Joint Director,
Joint Director of Collegiate Education,
Madurai.
7. The Principal,
Ayyanadar Janaki Ammal College,
Sivakasi – 626 124.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records relating to the impugned order in Na.Ka.No. 16091/2015/Q1, dated 20.01.2016 issued by the 4th respondent in pursuance of G.O.Ms.No.106 Higher Education (H1) Department, dated 14.05.2015 and quash the same and direct the 4th respondent not to recover of any pension amount from the petitioner.

For Petitioner	: M/s.G.Dhanalakshmi
For R-1 to R-6	: Mr.R.Sureshkumar Additional Government Pleader
For R-7	: Mr.R.Senthil Kumar



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ORDER

This writ petition is filed challenging the impugned order, dated 20.01.2016, issued by the 4th respondent with direction to the 4th respondent not to recover any pension amount from the petitioner.

2. The petitioner is wife of the deceased employee, namely K.Rajeswaran, the deceased employee was working as Lecturer in Economic in VHNS Nadar College and rendered totally 21 years 10 months and 17 days of service and he had voluntarily retired from service on 17.10.1979. At the time of his retirement, his monthly pension was fixed as Rs.482/- in the year 1979 on the basis of the scale of pay of Rs.700-1600/-. Subsequently, as per G.O.Ms.No.200 of 1999 his pension was revised, with effect from 01.04.1999. Again, in the year 01.01.2007 his pension was revised. In the meanwhile, the petitioner's husband died on 09.01.2015. After the demise of the petitioner's husband, the petitioner was receiving family pension. Suddenly, the 4th respondent has issued the impugned order, dated 21.02.2016 stating that the 3rd respondent has raised an audit objection in pursuance of G.O.Ms.No.106 Higher Education (H1)



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Department, dated 14.05.2015, stating that there was excess payment from 2015 onwards to the tune of Rs.12,64,091/- and the respondents have also started deducting the excess amount from the existing pension. The contention of the petitioner is that the petitioner's husband is entitled to revision of pension as per G.O.Ms.No.235 dated 09.09.2009. Therefore, the recovery is totally illegal. Moreover, the respondents have not issued any Show Cause notice to the petitioner. Therefore, the action of the respondents is violated of principles of natural justice.

3. The contention of the respondents is that the G.O.Ms.No.106 Higher Education (H1) Department dated 14.05.2015 has granted benefits to persons who had retired from service prior to 1986 as professor and completed total service of 19 years, the employee pay was stepped up to 50% and the family pension 30% with effect from 01.04.2015. The stepping up is applicable to the pensioners whose pay band is Rs.1200-50-1300-60-1900. The petitioner had retired from on 17.10.1979, but his last drawn salary was Rs. 700-40-1100-50-1300. The petitioner was not in the pay band of Rs. 1200-50-1300-60-1900, but he was in the pay band of Rs.700-40-1100-50-1300,



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the stepping was wrongly fixed in the pay band of Rs.1200-50-1300-60-1900 by the private college. During the annual inspection it was found that the petitioner revision was wrongly fixed and disbursed. Therefore, the respondents claimed that the impugned revision order is in accordance with law and the recovery is made after issuing the Show Cause notice to the petitioner. There is no illegality and therefore, prayed to dismiss the writ petition.

4. Heard Mr.G.Dhanalakshmi, learned counsel appearing for the petitioner and Mr.R.Sureshkumar, learned Additional Government Pleader appearing for R-1 to R-6 and Mr.R.Senthil Kumar, learned counsel appearing for R-7. Perused the material documents available on record.

5. It is an admitted fact that the petitioner had retired from service on 01.12.1982 in the pay band of Rs.700-40-1100-50-1300 and not in the pay band of Rs.1200-50-1300-60-1900. The government has changed the method to calculate the scale of pay while issuing G.O.Ms.No.234 dated 01.06.2009. While fixing the revision under G.O.Ms.No.235 dated 01.06.2009, the 6th respondent private college has wrongly fixed under the fitment table of Rs.



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37400-67000+AGP9000. While refixing under G.O.Ms.No.106, it was found the petitioner is not entitled to the concession since there is wrong fitment under G.O.Ms.No.235. The petitioner's husband is eligible for the time scale of pay Rs. 15600-39600+GP6000 and 50% of the service pension is only Rs.10,800, but the petitioner's husband misrepresented his claim and therefore, the 6th respondent has erroneously fixed pension at the time scale of Rs.37400-67000+AGP 9000 as per paragraph No.2 (vi) of G.O.Ms.No.235 Fin (PC) dated 01.06.2009 and fixed service pension as Rs.15467/- and family pension as Rs.13,920/-, with effect from 01.01.2007. During the annual inspection conducted by the audit authorities and Joint Director of Treasuries and Accounts, it was found that the petitioner's fixation is erroneous and over payment was made to the tune of Rs.12,64,091/-. Hence, it was directed to recover from the petitioner. Moreover, the respondents have issued two notices, dated 20.01.2016 as well as show cause notice, dated 22.01.2016 were issued to the petitioner. The petitioner has not responded reply to the same. Since the petitioner has not replied, the respondents have proceeded to recover the same. The respondents have already recovered five installments to the tune of Rs.87,835/- from February 2016 to June 2016. Subsequently, the recovery was stopped based on the interim order.



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6. The contention of the petitioner is that they have replied to the notice and produced a reply before this Court. However, there is no endorsement or no other evidence to show that the said objection was submitted to the respondents. There is no receipt for submitting through post also. Therefore, such a reply cannot be taken into account.

7. The respondents have contended that the 6th respondent is a private Aided institution wrongly sent the proposal and has over drawn the amount. Such contention cannot be entertained and the respondents ought to have scrutinized the proposal submitted by the private college.

8. As far as eligibility of fixation is concerned the petitioner is not entitled to. Thereafter, the respondents are directed to refix the correct scale of pay and consequently refix the correct pension.

9. As far as the recovery is concerned it is seen that the petitioner had received excess amount of Rs.12,64,091/-. It is the mistake of the private college as well as the official respondents. Moreover, the petitioner's husband is also



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aware of the wrong fixation and he is duty bound to bring it to the knowledge of the authorities when the wrong pay band was taken into account for fixing the revision of pension. Therefore, in the interest of justice the respondents shall recover 50% of the amount from the petitioner and the balance 50% shall be waived. The respondents have already recovered Rs.87,835/- from the petitioner. The balance amount in the aforesaid 50% shall be recovered from the petitioner.

10. With these observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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5. The Director ,
The Director of Pension,
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6. The Joint Director,
Joint Director of Collegiate Education,
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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.11922 of 2016
[2/2]**

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