



W.P(MD)No. 875 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.875 of 2017
and W.M.P. (MD) No.730 of 2017

Papathi

...Petitioner

Vs.

1. The Assistant Educational Officer,
Papanasam, Thanjavur District.

2. The Principal Accountant General (A & E),
Tamil Nadu, Chennai – 18.

3. The Sub – Treasury Officer,
Sub- Treasury office, Papanasam,
Thanjavur District.

....Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus to calling for the records of the 3rd respondent relating to order in காமுடி 57/2016/அ1 dated 15.09.2016 to quash the same and to issue consequential directions to the respondents to continue to disburse to the petitioner monthly pension which he was drawing up to September 2016 without reduction of recovery.



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For Petitioner : Mr.M. Saravanakumar
For R1 & R3 : Mr.A.Kannan
Additional Government Advocate

ORDER

Challenging the order of recovery passed by the third respondent on 15.09.2016, this Writ Petition is filed.

2. The facts of the case are that the husband of the petitioner, who worked as the Secondary Grade Teacher, died on 02.02.1990 while in service. Thereafter, the respondent has sanctioned family pension vide PPO No. Nil 352029. All of a sudden, the third respondent has reduced the monthly family pension and passed the order for recovering of the excess amount from the family pension vide order dated 15.09.2016. As per the order impugned in this Writ Petition, a sum of Rs.1,05,072/- is sought to be recovered from the petitioner on the ground of excess payment is made to the petitioner while granting family pension paid from 01.01.2007 to 31.08.2016 due to incorrect determination of pension.



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3. A counter affidavit has been filed by the respondents.

4. It is contended by the respondents that during the special inspection by the cell of the Office of the Commissioner of Treasuries and Accounts, Chennai, it was found that pension was paid to the petitioner excessively from 01.01.2007 and in this regard information was sent to the petitioner on 22.07.2016 towards excess payment and its recovery and effect given to reducing of pension.

5. It is further contended that as the family pension is fixed excessively, the order passed by the third respondent dated 15.09.2016 for recovery of the excess payment is correct and sought to dismiss this Writ Petition.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 3 and perused the record.



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7. As per the contention of the respondents 1 and 3, the excess amount has been paid to the petitioner towards family pension from 01.01.2007 to 31.08.2016. Admittedly, those excess payments are made due to incorrect determination of the pension and therefore, the respondents cannot find fault with the petitioner. It is also to be noted that before passing the impugned order dated 15.09.2016, no notice is issued to the petitioner or no opportunity is provided to the petitioner calling explanation of the petitioner, which is in violation of principles of natural justice. Besides this, this Court has to consider the legal principle in this regard as stated by the Hon'ble Supreme Court of India in the case of **State of Punjab Vs. Rafiq Masih** reported in **(2015) 4 SCC 334**, which is extracted herein under:

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations,



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wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order recovery.
- (iii) Recovery from the 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 in 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 a extent, as would far outweigh the equitable balance of the employer's right to recover”

8. As the impugned order was issued in violation of the principles of natural justice and by following the order of the Hon'ble Apex Court as extracted supra, this Court is of the considered opinion that the order impugned in this Writ Petition is



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unsustainable under law and accordingly, liable to be set aside.

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9. Accordingly, applying the ratio laid down in the judgment of the Hon'ble Apex Court stated supra, this Writ Petition is allowed and the order impugned in this Writ Petition is set aside.

4. No costs.

5. Consequently, connected miscellaneous petition is closed.

07.09.2023

Index : Yes / No
NCC : Yes / No
CM

To,

1. The Assistant Educational Officer,
Papanasam, Thanjavur District.

2. The Principal Accountant General (A & E),
Tamil Nadu, Chennai – 18.

3. The Sub – Treasury Officer,
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BATTU DEVANAND, J.

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