



W.P.(MD)No.13743 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13743 of 2016

and

W.M.P(MD)Nos. 10252 of 2016 & 1811 of 2017

A.Roseline Fernando

... Petitioner

Vs.

1. The Treasury Officer,
Thoothukudi District,
Thoothukudi.

2. The Principal Accountant General (A & E),
No.361, Anna Salai,
Chennai – 600 018.

3. The Dean,
Thoothukudi Government Medical College Hospital,
College Hospital,
Thoothukudi – 628 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the proceedings of the Impugned order in Na.Ka.No.190/E1/2016 dated 24.05.2016 on the file of the 1st respondent and quash the same.



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For Petitioner : Mr.G.Prabhu Rajadurai
For R-1 & R-3 : Mr.P.Thambidurai
Government Advocate
For R-2 : Mr.P.Gunasekaran

ORDER

This writ petition is filed to quash the impugned order, whereby, recovery order was issued to recover a sum of Rs.5,58,494/-, as excess pension.

2. The petitioner has joined in the Medical Service as Staff Nurse in the year 1972 and attained superannuation on 31.05.2006. At the time of retirement, the petitioner was working as Nursing Superintendent Grade II and was granted pension for a sum of Rs.7,245/-per month.

3. On 03.02.2010, the 2nd respondent has revised the monthly pension of the petitioner, as Rs.13,625/-, with effect from 01.01.2007. In pursuant to the same, the petitioner was receiving revised pension. In the month of April 2016, the 1st respondent without any notice or intimation revised the petitioner's pension as, Rs.11,325/-per month.



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4. The contention of the petitioner is that the 1st respondent has passed the impugned recovery order, dated 24.05.2016 without any notice, any intimation or enquiry. Therefore, the petitioner has approached this Court by way of filing this writ petition.

5. At the time of admission, this Court has granted an interim stay on 02.08.2016 not to recover the excess pension.

6. The 1st respondent has filed counter along with vacate stay petition stating that the 2nd respondent, vide proceedings dated 25.01.2016 and as per G.O.Ms.234 Finance (PC) Department, dated 01.06.2009, received a proposal from the 3rd respondent and the same is extracted hereunder:

	Original	Revised
Pension	7425	13625
Commutation	310662	518196
DCRG	303831	449625



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During the audit of Regional Joint Director of Treasuries and Accounts, Tirunelveli, it has been pointed out that the Revision of pensionary benefits is erroneously calculated and the excess payment is detailed as under:

1.	Revised pension worked out from Rs.13625/- to Rs.11325/- excess payment of pension and DA worked out to Rs.405648/-.
2.	Commutation Value of Pension Rs.518196/- to Rs.441250/- excess of Rs.76946/-.
3.	DCRG Rs.449625/- to Rs.373725/- excess of Rs.75900/-.

Totally, there was an excess payment of Rs.5,58,494/-. The main reason for the excess payment is double Grade pay was taken by the 3rd respondent, while revising the pension proposal. Therefore, the petitioner is not entitled to the excess payment and pray to dismiss the writ petition.

7. It is an admitted fact that the respondents have taken double Grade pay, while calculating the revised pension as per G.O.Ms.234 Finance (PC) Department, dated 01.06.2009. Therefore, the petitioner is not entitled to and hence the respondents ought to refix the pensionary benefit as per law.



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8. As far as the recovery of excess payment is concerned, the respondents have already recovered three installments from the petitioner. Since the petitioner is not entitled to the said amount, which is illegal amount in petitioner's hands, the said amount shall not be repaid to the petitioner. As far as the balance amount is concerned, since the petitioner is aged about 70 years, the respondents shall recovery 50% from the remaining amount.

9. With the above observations, this writ petition is partly allowed.

No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

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To

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Thoothukudi.
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Thoothukudi Government Medical College Hospital,
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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.13743 of 2016**

27.02.2023