



W.P.(MD)No.17022of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17022 of 2016

and

W.M.P(MD)No.12344 of 2016

P.Chinnaiah

... Petitioner

Vs.

The Assistant Treasury Officer,
Office of The Sub Treasury,
Alangudi Post and Taluk,
Pudukkottai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records of respondent in Na.Ka.No.788-1/2016/A, dated 19.08.2016 and quash the same as illegal and arbitrary and in consequences thereof directing the respondent to repay the sum of Rs.13,559/- (Rupees Thirteen thousand five hundred and fifty nine only) already recovered from the petitioner's pension amount at once.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.P.Thambidurai
Government Advocate



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ORDER

This writ petition is filed to quash the impugned order, dated 19.08.2016 with consequential direction to the respondent to repay a sum of Rs.13,559/- (Rupees Thirteen thousand five hundred and fifty nine only) already recovered from the petitioner's pension amount.

2. The petitioner was appointed as Secondary Grade teacher, thereafter Physical Educational Teacher on 30.10.1957 and awarded selection grade on 01.04.1974 and special grade on 01.06.1981 and the petitioner has retired from service on 31.03.1992. The petitioner has served for 34 years. There was a pay anomaly and the respondents have fixed the pay scale applicable to the post of secondary grade teacher.

3. The learned counsel appearing for the petitioner submitted that the petitioner is entitled to the scale of pay applicable for primary school Headmaster post, as per G.O.Ms.No.216 Finance (Pay Cell) dated 22.03.1993, which has extended the benefits to the similarly placed persons. Therefore, the petitioner



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has filed W.P(MD)No.16269 of 2012 and the same was allowed by this Court. The respondents through proceedings, dated Nil-- 03.2014 extended the benefits of G.O.Ms.No.216 Finance (Pay Cell) dated 22.03.1993, and refixed the petitioner's scale of pay along with arrears. Thereafter, the respondents have issued G.O.Ms.No.235 Finance, dated 01.06.2009, whereby the pension ought to have been revised to Rs.15600-39100 + 5400 for the scale of pay of Rs.2000-60-2300-75-3200. On 11.03.2016, the petitioner submitted a petition to revise his pension from Rs.9,040/- to Rs.10,500/-. Since the petitioner is eligible to enhance the pension, the respondent has accepted the contention of the petitioner and has disbursed a sum of Rs.2,92,522/- and arrear amount for a period from January 2007 to July 2016 and also his basic pension was re-fixed as Rs.10,500/- and the petitioner has received the same from July 2016 onwards. However, the respondents have passed the impugned order, dated 19.08.2016, whereby it was ordered that, on inspection the respondents came to know excess payment of Rs.2,92,522/- was paid to the petitioner and the recovery order was passed directing to recover a sum of Rs.13,599/- in 22 equal monthly installments from the month of August 2016 and the respondents have recovered first installment. The contention of the petitioner is that the respondents have passed



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the impugned recovery order without issuing any notice and the same is violating the principles of natural justice.

4. At the time of admission this Court has granted an interim order for recovery alone. The respondents have filed counter stating the pension was fixed as per paragraph No.2(vi) of G.O.Ms.No.235 followed by G.O.Ms.No.200 Finance Department, dated 18.05.1999. It has been instructed in the Government Finance (Pay Cell) Department Letter No.87191/PC/2004-1 dated 12.01.2005 and Principal Accountant General, Chennai Letter R.No.PR.AC(A&E)Legal/MISC/34/12-13 320/198410 dated 08.05.2012 the revision of pension should be fixed as per paragraph No.4 (1) of G.O.No.200 in the scale of pay applicable to the post last held at the time of retirement and not with reference to the scale of pay in which pay was drawn. However, the respondents have wrongly fixed by fixing the scale of pay. Moreover, as per G.O.Ms.No.270, as per paragraph No.2(vi) of G.O.Ms.No.235 he should be paid pension at Rs.6900/- from 01.01.2007 in the pay band Rs.9300 + G.P. 4500/-. But it has been paid Rs.10,500/- has resulted in over payment of Rs.2,92,522/-. The petitioner retired from service as Special Grade Physical Education Teacher (Special Teacher), but the pay was fixed in the



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cadre of Primary School Headmaster i.e., Rs.15600 - 5400 and the pension was wrongly fixed as Rs.10,500/-, therefore, excess payment was directed to recovered.

5. Heard Mr.P.Ganapathi Subramanian, learned counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondent. Perused the material documents available on record.

6. The learned counsel appearing for the petitioner submitted that the petitioner is now aged about 83 years and wrong fixation was done by the respondents and there is no mistake on the part of the petitioner, therefore, prayed not to recover the same.

7. On perusal of records, it revealed that the respondent has not followed the instructions of the Government orders for fixing pensionary benefits in VI Pay Commission, thereby excess amount of Rs.2,92,522/-was paid as arrears for the period from January 2007 to July 2016. Moreover, as rightly pointed out by the respondent that pay scale ought to be fixed as per G.O.Ms.No.



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200, but the respondents have taken the scale of pay in respect of post.

8. Therefore, this Court is of the considered opinion that the petitioner is entitled to the pay revision which is wrongly carry out by the respondents. Therefore, the respondents are directed to re-fix the pay as per existing rules applicable to the petitioner. As far as the recovery amount is concerned, since the petitioner is 83 years old, the respondents are restrained from recovering the excess amount paid to the petitioner. However, the respondents have already recovered one installment the same need not be paid to the petitioner.

9. With these observations and directions, this Writ Petition is Allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

The Assistant Treasury Officer,
Office of The Sub Treasury,
Alangudi Post and Taluk,
Pudukkottai District.



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 17022 of 2016**

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