



W.P.(MD) No.23701 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 03.08.2023

ORDERS PRONOUNCED ON : 08.08.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.23701 of 2016

and

W.M.P.(MD) No.17033 of 2016

and W.M.P.(MD) No.1348 of 2017

K.Rukmani

... Petitioner

Vs.

1.The Assistant Elementary Educational Officer,
R.S.Mangalam,
Ramanathapuram District.

2.The Accountant General (A&E),
361, Annasalai,
Chennai-18.

3.The Treasury Officer,
District Treasury,
Ramanathapuram,
Ramanathapuram District.

4.The Assistant Treasury Officer,
Sub Treasury Office,
Thiruvadanai, Ramanathapuram District.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the entire records pertaining to the impugned order passed by the 1st respondent *vide* his proceedings in Na.Ka.No.653/A1/2016 dated 11.11.2016 and quash the same.

For Petitioner	:	Mr.S.Balaji
For RR1, 3 & 4	:	Mr.V.Nirmal Kumar Government Advocate
For R2	:	Mr.P.Gunasekaran

ORDER

By virtue of the impugned order, which is under challenge in this writ petition, the respondents sought to recover from the petitioner, who is a widow of the deceased employee, after retirement.

2. Heard the learned counsel for the petitioner, the learned Government Advocate appearing for respondents 1, 3 and 4 and the learned counsel appearing for the 2nd respondent and perused the materials available on record.



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3. The case of the petitioner is that her husband was a Teacher under the control of the 1st respondent and rendered continuous service for a period of 31 years and retired on 31st May, 2010, while he was working as a Headmaster at Panchayat Union Elementary School, Uppoor, R.S.Mangalam Panchayat Union. He died on 11.07.2014 at the age of 62 years. Prior to his retirement, after getting approval from the 1st respondent, the 2nd respondent had prepared pension papers, whereupon his last scale of pay was fixed as Rs.9300-34800. As per the Joint Pension Payment Order, normal family pension was fixed at the rate of Rs.6,789/- per month and enhanced family pension was fixed as Rs.11,315/- per month. The petitioner's husband received his monthly pension after his retirement and after his death, the petitioner has been receiving enhanced family pension up to 09.05.2017.

4. On 15.11.2016, the petitioner received the impugned order in Na.Ka.No.653/A1/2016, dated 11.11.2016, wherein it is stated that during April, 2010, a sum of Rs.2,57,469/- was paid to the petitioner's husband towards Provident Fund. But the accumulated Provident Fund up to March,



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2010 was only Rs.1,36,437/- in the account of the petitioner's husband.

Thereby, a sum of Rs.1,21,232/- was excessively paid to him. It is further stated that a sum of Rs.18,749/- was paid as V-Pay Commission arrears to her husband. But the actual payment to be paid is Rs.16,738/- only. As such in that regard, Rs.2,011/- was excessively paid to her husband. Therefore, in the impugned order, it is stated that on the excess amount of Rs.1,23,243/- paid, interest was calculated as Rs.40,264/- up to 30th June, 2014. *Vide* the impugned order, the petitioner is directed to pay the said excess amount of Rs.1,63,507/- on or before 18.11.2016, failing which the amount will be recovered from the pension amount. Aggrieved by the action of the respondents, the present writ petition has been filed.

5. Learned counsel for the petitioner would submit that in the present case, the mistake was not on the part of the petitioner's husband and there is no misrepresentation made by him with regard to the excess payment. As the petitioner's husband got retired on 31st May, 2010 and died on 11.07.2014, in the light of the judgment of the Hon'ble Apex Court in ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.,***



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reported in **(2015) 4 SCC 334**, recovery of excess payment could not be made from the retired employees or employees, who are due to retire within one year from the date of the order of recovery and when the excess payment has been made for a period of more than five years before the order of recovery is issued. Accordingly, he sought to allow the writ petition.

6. Learned counsel for the petitioner has also placed reliance on the order of the Madurai Bench of this Court in W.P.(MD) No.1429 of 2012, dated 16.07.2015.

7. On the other hand, the learned counsel appearing for the 2nd respondent, placing reliance on the order of the Hon'ble Apex Court in ***State of Punjab and others Vs. Rafiq Masih (Whitewasher)*** reported in **(2014) 8 SCC 883**, an order in ***Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others*** reported in ***AIR 2012 SC 2951*** and the order of this Court in W.P.No.7326 of 2018, dated 27.08.2018, would submit that the petitioner's husband failed to submit proper calculations while making an application for 90% of the Providen Fund amount and the excess payment



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was made only on account of the wrong calculation of the petitioner's husband and as such, the recovery is sustainable in the eye of law.

8. Having considered the contentions of both side counsels and upon perusal of the material available on record, it appears that admittedly an amount of Rs.1,23,243/- was paid to the petitioner's husband excessively. But, it has to be considered that who is responsible for that excess payment. The contention of the respondents is that due to wrong calculations made by the petitioner's husband, that excess payment is made. This Court is unable to accept such contention. It is the responsibility of the respondents to verify and sanction the amount for which the petitioner's husband was entitled at the rate of 90% of the Provident Fund amount as per his application. If the respondents maintained records properly, they could not sanction that excess amount. They cannot escape their liability by throwing the burden on the deceased employee.

9. Moreover, the husband of the petitioner was retired on 31.05.2010 and died on 11.07.2014. After the demise of her husband, the



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petitioner is surviving with the family pension being paid to her. The petitioner has to take care of the needs of her two daughters and one son. It appears that family pension is the only source of income to their family for survival. Under these circumstances, if the excess amount is recovered from the petitioner's family pension, it will cause serious hardships to the petitioner to maintain her family. Therefore, this Court is of the considered opinion that there is no reasonableness or rationality in the decision of the respondents to recover the said amount from the petitioner at present.

10. Having gone through the reliance placed by either counsel, it is appropriate to extract the relevant paragraphs of the said judgments and for better appreciation of the case as herein under:

(i) ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.,*** reported in ***(2015) 4 SCC 334***:

“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



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referred to hereinabove, we may, as a ready reference, summarise the following few situations, 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 of 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 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.”



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(ii) W.P.(MD) No.1429 of 2012, dated 16.07.2015:

“8. In this case, the petitioner / employee has retired from service and therefore, in the light of the decision of the Hon'ble Supreme Court, referred to above, no recovery can be effected from the petitioner, more particularly, as observed earlier, the respondents have not reserved any rights to proceed with for recovery of the amount. The recovery could only be permissible in consonance with law and Statute. Therefore, the contention of the respondents that the petitioner was paid excess amount, which includes gratuity amount, cannot be accepted.”

11. The above judgments are squarely applicable to the present case.

12. This Court carefully considered the reliance placed by the respondents. Though there is no dispute with regard to the principle of law laid down in the said judgments, in the opinion of this Court, the facts and circumstances of the present case are different and it is not useful to substantiate the contention of the respondents.



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13. For the above stated reasons, in the considered opinion of this Court, the order impugned in this writ petition is unsustainable and untenable in the eye of law and it is liable to be set aside.

14.1. Accordingly, this Writ Petition is allowed and the order impugned in this writ petition in Na.Ka.No.653/A1/2016, dated 11.11.2016 is hereby set aside.

14.2. No costs.

14.3. Consequently, connected miscellaneous petitions are closed.

08.08.2023

Note: Issue order copy by 10.08.2023

NCC : Yes/No

Index : Yes/No

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BATTU DEVANAND, J.

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Pre-delivery Order made in
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