



W.P.(MD) No.24951 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 13.09.2023

ORDERS PRONOUNCED ON : 03.10.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.24951 of 2016

and

W.M.P.(MD) No.18046 of 2016

R.John Louis (Died)

1.D.Barbaramary Callista

... Petitioner

*[P1-Substituted vide Court order dated 01.09.2023 in W.M.P.
(MD) No.17480 of 2023 in W.P.(MD) No.24951 of 2016]*

Vs.

1.The Government of Tamil Nadu,
Rep., by the Principal Secretary,
Higher Education Department,
Fort St. George, Chennai-9.

2.The Director of Collegiate Education,
College Road,
Chennai-6.

3.The Treasury Officer,
District Treasury,
Trichy.



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4.The Principal,
St. Xavier's College,
Palayamkottai,
Tirunelveli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings in Na.Ka.No.26404/2016/S1, dated 22.11.2006 issued by the 3rd respondent, quash the same and direct the 3rd respondent to continue to pay the revised pension.

For Petitioner	:	Mr.R.Subramanian
For RR1 to 3	:	Mr.A.Kannan Additional Government Pleader
For R4	:	Mr.T.Cibi Chakraborty

ORDER

Heard Mr.R.Subramanian, learned counsel for the petitioner, Mr.A.Kannan, learned Additional Government Pleader appearing for the Respondents No.1 to 3 and Mr.T.Cibi Chakraborty, learned counsel for the 4th respondent.



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2. This writ petition was originally filed by one R.John Louis. During the pendency of this writ proceedings, he died and his wife filed substitute petition bearing W.M.P.(MD) No.17480 of 2023 and the same was allowed by order of this Court dated 01.09.2023.

3. The case of the petitioner is that the original writ petitioner, i.e., the husband of the petitioner was appointed as Lecturer in Maths on 23.06.1955 in the 4th respondent-College. He was promoted as Professor on 01.07.1969. On 31.05.1989, he was relieved from services on attaining the age of superannuation from the 4th respondent-College. His pension amount was fixed at Rs.1,233/- on 11.07.1988. Thereafter, the pension was revised periodically and his revised pension was fixed at the pay scale of Rs.37,400 - 67,000/- with grade pay of Rs.9,000/- and the pension amount was Rs.23,200/-. He has been receiving the revised pension all these years.

4. Suddenly, the 3rd respondent issued proceedings in Na.Ka.No. 26404/2016/S1, dated 22.11.2016 stating that there is an excess payment of Rs.15,09,327/- and the same is being recovered by instalment amount of



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Rs.45,500/- per month commencing from November, 2016 from the pension amount. Aggrieved by the action of the 3rd respondent in issuing such order, the husband of the petitioner has filed this writ petition.

5. Though this writ petition was admitted and Rule NISI was ordered on 23.12.2016, no counter affidavit has been filed till date on behalf of the respondents.

6. Learned counsel for the petitioner submits that the impugned proceedings are *ex facie* arbitrary, illegal and unsustainable. Learned counsel would submit that the respondents ought to have seen that on 31.05.1989, the petitioner's husband was relieved from service on attaining the age of superannuation and at that time, there was no designation as Selection Grade Lecturer, which came into force only on 19.09.1996 after University Grants Commission revised scales. As per G.O.Ms.No.106, Higher Education (H1) Department, dated 14.05.2015, the pensioners who have completed total service of 19 years are entitled for revised pension. The petitioner's husband has completed more than 19 years of service and as



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such, he is entitled to the revised pension. As such, the contention of the 2nd respondent that the petitioner's husband was paid excess amount is not correct. Learned counsel further contends that there is no misrepresentation on the part of the petitioner's husband regarding revision of pension and as such, the 2nd respondent is not entitled to effect recovery. Learned counsel also submits that the order impugned in this writ petition is passed by the 3rd respondent without affording any opportunity to the petitioner's husband by issuing any show cause notice and as such, it is unsustainable under law.

7. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, order dated 02.05.2022 of the Hon'ble Apex Court in ***C.A.No.7115 of 2010 [Thomas Daniel v. State of Kerala & Ors]***, order dated 26.07.2023 in ***W.P. (MD) No.17154 of 2016*** and order dated 08.08.2023 in ***W.P.(MD) No. 22395 of 2016*** of this Court.



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8. Learned Government Advocate appearing for the Respondents No.1 to 3 contends that as per G.O.Ms.No.106, Higher Education (H1) Department, dated 14.05.2015, it is found that in the auditing with effect from 01.01.2007, an excess amount of Rs.15,09,327/- has been paid to the petitioner's husband up to 31.03.2015 and accordingly, he was informed that a sum of Rs.45,500/- will be recovered from his monthly pension from November, 2016 onwards and as such, there is no irregularity or illegality in passing the impugned order and prayed to dismiss the writ petition.

9. This Court gave anxious consideration to the submissions made by the respective counsels and carefully perused the material available on record including the authorities placed by the learned counsel for the petitioner.

10. Admittedly, there is no dispute with respect to the appointment of the petitioner's husband as Lecturer in Maths to till retirement from service on 31.05.1989. As per the revised pension scale fixed by the respondents from time to time, the petitioner's husband has been receiving



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the revised pension from the date of his retirement to till the date of the impugned order.

11. It is the contention of the 2nd respondent that an excess payment was made to the petitioner's husband from 01.01.2007 to 31.03.2015. But on careful perusal of the order impugned in this writ petition, wherein the 3rd respondent has contemplated to effect recovery of a sum of Rs.45,500/- per month from the monthly pension of the petitioner from November, 2016 onwards, it is clearly established that no show cause notice was issued to the petitioner's husband calling for his explanation or no opportunity was provided to him to putforth his case before the respondents to demonstrate whether the allegation of the respondents is correct or not? It is also an admitted fact that in fixing the revised pension to him, the petitioner's husband has no role to that effect and there is no misrepresentation on his part with regard to the revision of pension. The respondents themselves have fixed the revised pension and paid the same to the petitioner's husband for all these days. As such, there is no justification in issuing the impugned order by the 3rd respondent to recover an amount of



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Rs.45,500/- from the monthly pension of the petitioner. In fact, this writ petition was filed in the year 2016 and at that time, the petitioner was aged 87 years. At that age, the 3rd respondent issued the impugned order for recovery and the same was challenged before this Court and at the admission stage, this Court ordered interim stay of the impugned order and during the pendency of this writ proceedings, the petitioner died on 16.05.2021 at the age of 92 years and the wife of the petitioner at the age of 81 years came on record.

12. It is settled law that without issuing any notice to the aggrieved party, passing an order is in violation of the principles of natural justice.

13. Admittedly, in the present case, before passing the impugned order, the 2nd respondent did not choose to issue show cause notice to the petitioner's husband calling for his explanation. As such, in our considered view, the order impugned in this writ petition is passed in violation of the principles of natural justice.



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14. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in ***Rafiq Masih (White Washer)*** (*supra*), this Court set aside the proceedings of recovery in W.P.No.6945 of 2022, dated 26.06.2023 and in W.P.(MD) No.16106 of 2016, dated 20.07.2023. The relevant portion of the judgment of the Hon'ble Apex Court in ***Rafiq Masih (White Washer)*** (*supra*), is extracted hereinunder:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).



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(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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 employers right to recover.”

15. One of the guidelines as relevant to the present case is that no recovery to be initiated from retired employees or employees, who are due to retire within one year of the order of recovery. In the present case, the original petitioner retired on 31.05.1989. The respondents passed order for



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recovery of the excess payment in the year 2016. Thus, the impugned order is unsustainable.

16. The Hon'ble Apex Court in **Thomas Daniel** (*supra*), while considering identical issue, held as extracted hereinunder:

“(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

17. This Court in W.P.(MD) No.17154 of 2016 and W.P.(MD) No. 22395 of 2016, while dealing the identical issues, has set aside the orders for recovery impugned therein.



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18. On consideration of the facts and circumstances of the present case and in the light of the authorities stated *supra*, this Court has no hesitation to hold that the action of the 3rd respondent in issuing the impugned order for recovery from the pension of the petitioner is illegal, arbitrary, unjust and in violation of the principles of natural justice and accordingly, the impugned order is hereby set aside.

19. For the above reasons, this Writ Petition is allowed.

20. There shall be no order as to costs.

21. Consequently, connected miscellaneous petition is closed.

03.10.2023

Note: Issue order copy by 06.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

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- 2.The Director of Collegiate Education,
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Chennai-6.
- 3.The Treasury Officer,
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BATTU DEVANAND, J.

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Pre-delivery Order made in
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