



W.P.(MD).No.1362 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.1362 of 2017

and

W.M.P(MD)No.1118 of 2017

J.Jeyakumar Appadurai

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai-600 004.

2.The Accountant General (Accounts &
Entitlements),
No.361, Anna Salai,
Teynampet,
Chennai-600 018.

3.The District Treasury Officer,
O/o. The District Treasury Officer,
Sivagangai,
Sivagangai District.

4.The Sub-Treasury Officer,
Karaikudi,
Sivagangai District.

5.The Superintendent of Police,
Sivagangai District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to Impugned order passed by the 4th respondent in Na.Ka.No. 6/A1/2016/dated 09.01.2017 and quash the same and consequently direct the respondents to sanction the dropped amount of terminal benefit Rs.1,43,274/- (Rupees One Lakh Forty Three Thousand Two hundred and Seventy Four Only) with interest and to refund the recovered amount in the month of December 2016 Rs.16,558/- and to stop further recovery from monthly pension.

For Petitioner : Mr.A.Rajaram

For R1,R3-R5 : Mr.P.Thambidurai
Government Advocate

For R2 : Mr.P.Gunasekaran

ORDER

This writ petition has been filed challenging an order passed by the 4th respondent, dated 09.01.2017 and consequently, direct the respondents not to deduct the pension amount and to refund the recovered amount in the month of December 2016 for Rs.16,558/- (Rupees Sixteen Thousand Five Hundred and



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Fifty Eight only).

2. The petitioner was appointed as Grade-II Police Constable on 10.12.1968. After rendering 39 years of service, he retired from service on 31.05.2007. From the date of retirement, the petitioner is receiving a monthly pension, which was fixed as Rs.26,020/- (Rupees Twenty Six Thousand and Twenty only).

3. The contention of the petitioner is that after 5 years of his retirement, the 2nd respondent has issued a proceeding in P04/3/REV/20404976 PPO No/C 67310, dated 05.09.2012, wherein it is stated that the petitioner's pension was calculated wrongly and an excess amount was drawn in the petitioner's account. The 6th pay commission revision was granted through G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009. Subsequently, several representations were submitted alleging certain discrepancies, discriminatory, pay anomalies etc. Hence, the Government appointed "One Man Commission" and issued various government orders, issued letters clarifying the issues. Based on these Government Orders and letters, the petitioner's pensionary



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benefits were revised with giving notional effect from the year 2006 onwards. However, while fixing the same, the respondents have fixed it wrongly and an excess amount was paid to the petitioner to the tune of Rs.13,649/-. This was found out by the 2nd respondent and the same was intimated to the petitioner as well as the other respondents vide proceedings, dated 05.09.2012. In spite of this communication, the drawing officer as well as the appointing authority has paid the excess amount to the petitioner from 2012-2017. Subsequently, the same was rectified from 2017 onwards. Aggrieved over rectifying the wrong fixation and the recovery amount, the petitioner has come before this Court.

4. The claim of the petitioner is that since the petitioner is a retired person, the excess amount paid to the petitioner cannot be recovered. The said contention cannot be accepted, since the petitioner was retired in the year 2007 and the petitioner was paid correct pension and other benefits. The pay revision was passed in the 6th pay commission in the year 2009, but giving effect from 2006 onwards. Subsequently, the pay anomaly and discrepancies were rectified from 2010 onwards by issuing various government orders and clarifying letters. In the said 6th pay commission revision, there was revision in scale of pay to the



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serving employees. As far as revision to the retired employees is concerned, different parameters were fixed for persons who had retired prior to 01.06.2006 and different parameters were fixed for persons who had retired after 01.06.2006. The petitioner's pension revision was wrongly fixed based on the G.O.Ms.No.234. Therefore, the claim of the petitioner that since he was retired from service, the said recovery cannot be made and it cannot be accepted. Moreover, the 2nd respondent has specifically issued a communication, dated 05.09.2012 indicating that wrong fixation has been carried out. Immediately, the petitioner ought to have approached the appointing authority and the drawing authority and intimated them to rectify the same. The petitioner having received the intimation letter about the wrong fixation from 2012 onwards until 2017, cannot claim relief. In spite of receiving such a communication, the petitioner cannot take advantage of wrong fixation. The Hon'ble Supreme Court has considered such plea in the case of ***High Court of Punjab & Haryana and others VS Jagdev Singh reported in 2016 (14) SCC 267*** and held that if any amount is paid after intimating the employee, the same would be recovered, if it is pointed out that the amount is wrongly fixed. Once such an intimation is given to the petitioner, then it is incumbent on the petitioner to



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approach the authorities to intimate and rectify the same. Hence the liability ought to be fixed on the petitioner also. The appropriate authority was also intimated about the wrong fixation and hence it is also liable. Since both the petitioner as well the appointing authority are liable, when the 2nd respondent had intimated the wrong fixation as early as 2012, this Court is fixing the responsibility on petitioner and as well as on the 5th respondent. The Sub-Treasury Officer, who is the 4th respondent has intimated in the year 2017 and rectified the mistake. However, the 4th respondent also failed to carry out the mistake from 2012 to 2017. Since at least the 4th respondent has rectified the mistake subsequently, the liability is not fixed on him.

5. The learned counsel appearing for the respondents submitted that 2017 onwards, correct fixation has been carried out and the correct payment is being paid to the petitioner. Therefore, this Court is of the considered opinion the correct fixation from the year 2017 is absolutely right, since the petitioner is not entitled to said revision. As far as the excess amount due to wrong fixation from 2012-2017 is concerned, this Court is fixing the responsibility on the erring officials as well as the petitioner. The excess amount paid due to wrong fixation



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is Rs.5,13,641 (Rupees Five Lakh Thirteen Thousand Six hundred and Forty one only) and the respondents are directed to recover the 50% of the said amount. As far as the erring authority, the respondents shall take necessary steps to initiate disciplinary proceedings against the said authority.

6. The learned counsel for the petitioner submitted that the DCRG has been wrongly recovered from the petitioner. However, that issue is not raised in this writ petition and it is a different cause of action. Hence, the petitioner is at liberty to submit a separate representation. On submitting the representation, the respondents shall consider the same and pass necessary orders in accordance to law within a period of four (4) weeks from the date of submission of such representation.

7. With the above said observations, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.



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NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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S.SRIMATHY, J.

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