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W.P. No.10201 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

W.P. No.10201 of 2018

and

W.M.P.No.12133 of 2018

1. L.Gunasagaran (Deceased)
2. V.Sunanthadevi
3. G.Amirthasagaran
4. N.Ellakanadevi

... Petitioners

*Petitioners 2 to 4 are brought on record
as legal representatives of the deceased
1st petitioner (L.Gunasagaran) vide order
made in W.M.P..No.2335 of 2024 in W.P.No.10201 of 2018*

Vs.

1. The Accountant General (Principal),
Accountant General Office,
Audit Section,
Anna Salai,
Teynampet,
Chennai – 600 018.
2. The Director of Treasuries,
Panagal Maaligai,
Saidapet,
Chennai – 600 015.
3. The District Treasury Officer,
Tiruvannamalai.
4. The Assistant Treasury Officer,
Sub Treasury,
Arni, Tiruvannamalai Dist.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration declaring the action of the respondents in downwardly revising the pension of the petitioner from Rs.35,818/- to Rs.25,325/- as illegal and consequently, direct the respondents to restore the original pension amount of Rs.35,818/- and pay all the arrears with interest at the rate of 12% per annum till date of disbursement.

For Petitioners : M/s.Chandini Rajkishore for
M/s.T.Sai Krishnan

For Respondents : Mr.L.S.M.Hasan Fizal, AGP for RR2 to 4
Mr.V.Murali, SC for R1

ORDER

This writ petition has been filed wherein the monthly pension of the petitioner is reduced from Rs.35,818/- to Rs.25,325/- as illegal and violation of principles of natural justice.

2. The learned counsel for the petitioner submits that without issuing any notice or without passing any order on being heard the petitioner, the respondents have unilaterally decided to reduce the monthly pension of the petitioner which is in violation of principles of natural justice.

3. A counter affidavit has been filed by the respondents. Though several averments are made in the counter affidavit, there is no specific mention about whether the petitioner was issued any notice before reducing



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the pension of the petitioner or not?

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4. The learned Additional Government Pleader appearing for the respondents submits that as per the objection made by the audit authorities, wherein it is stated that wrong fixation of pension was made to the petitioner and accordingly pension of the petitioner is reduced as per the eligibility and he further contends that there is no illegality or irregularity in the action of the respondents in reducing the pension and sought dismissal of this writ petition.

5. The learned counsel for the petitioner in order to substantiate their stand has placed the copy of order dated 16.10.2020 in W.P.(MD).No.17259 of 2013 and another order dated 17.07.2023 in W.P.(MD).No.3828 of 2016 and order dated 05.02.2024 in W.P.No.16973 of 2017 wherein this Court has set aside the order of the respondents and recovery proceedings has been initiated against the petitioner.

6. On consideration of the facts and circumstances of the case it is an admitted fact that the respondents did not put the petitioner on notice before reducing the monthly pension of the petitioner.



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7. In view of the same this Court is of the considered opinion that the action of the respondents in reducing the monthly pension of the petitioner without issuing any notice to the petitioner or without affording any opportunity to the petitioner is against to the principles of natural justice.

8. On perusal of the orders of this Court relied upon by the learned counsel for the petitioner, it appears that in an identical circumstance similar writ petitions are allowed on the ground of violation of principles of natural justice . For better appreciation, Paragraph 9 of the order dated 05.02.2024 in W.P.No.16973 of 2017 passed by this Court is extracted hereunder:

9. In an identical circumstances, this Court by an order dated 24.03.2022 in WP.No.1723 of 2017 held as extracted herein under :-

“5. It is trite law that any administrative action which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken. The Government of Tamil Nadu in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 after referring to the principles laid down by the Hon-ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (Whitewasher) [(2015) 4 SCC 334], has issued detailed instructions providing the manner in which any excess amount



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paid to Government Servants/Pensioners/Family Pensioners would have to be made.

6. There is nothing to show that before the excess payment claimed to have been made was effected, any show cause notice had been issued to the Petitioner calling for an explanation from him with supporting materials relied in that regard. Such incurable flaw in decision making by the Respondents is in violation of the principles of natural justice and would vitiate the impugned order. In that view of the matter, the concerned authorities shall appropriately deal with the matter following due process. It shall be incumbent upon the concerned authorities to issue show cause notice to the Petitioners along with working-sheet of the calculation for the excess payment claimed to have been made to the Petitioner and after affording full opportunity of personal hearing to them and considering each of the objections that may be raised by them, a reasoned order shall be passed on merits and in accordance with law following the procedure laid down in the instructions in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 issued by the Government of Tamil Nadu, uninhibited and uninfluenced by the earlier order passed in the matter, and the decision taken shall be communicated to the Petitioners under written acknowledgement.”

9. Following the same, the writ petition is disposed of declaring that the action of the respondents in reducing the pension of the petitioner from Rs.35,818/- to Rs.25,325/- as illegal and in violation of principles of natural justice and accordingly the respondents are directed to restore the original pension and to pay the arrears within a period of two months from the date of receipt of a copy of this order.



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10. It is brought to the notice of this Court that during the pendency of this writ petition, the sole petitioner died and his legal heirs are brought on record. The learned Government pleader submits that the legal heirs who are impleaded as petitioners 2 to 4 in this writ petition are majors and they are not entitled for the family pension.

11. Considering the same, it is made clear that the petitioners 2 to 4 are entitled for the arrears to be paid by the respondents, consequent to this order.

12. With the above direction, this writ petition is disposed of.

13. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

27.03.2024

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RAP

Index : Yes / No

Speaking order : Yes / No

NCC : yes / No



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- To
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Accountant General Office,
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 2. The Director of Treasuries,
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BATTU DEVANAND.,J

rap

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