IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**19.12.2023**
Pronounced on	**08.01.2024**

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.8401 of 2021
and
W.MP.No.8949 of 2021

Padma ... Petitioners

Vs.

1. The Additional Chief Secretary,
Finance Department,
Secretariat, Chennai.

2. The Commissioner of Treasuries and Accounts,
Panagal Building,
No. 1, Jennis Road,
Saidapet, Chennai - 600 015.

3. The Treasury Officer,
District Treasury,
Coimbatore. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records on the file of the 1 respondent in G.O.(2U) No. 52 dated

24.10.2018 and to quash the same as illegal and without jurisdiction and consequently direct the Respondents to refund the cumulative incremental benefits withheld so far from the Petitioner along with interest.

For Petitioner : Mr.Sunny Akara for
M/s.V.Srimathi

For Respondents : Mr.J.Ravindran, Addl.Advocate General
assisted by Mr. Arunkumar
Additional Government Pleader.

ORDER

This Writ Petition has been filed seeking an issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in G.O. (2U) No. 52 dated 24.10.2018 and to quash the same as illegal, without jurisdiction and consequently direct the Respondents to refund the cumulative incremental benefits withheld so far from the Petitioner along with interest.

2. The petitioner was working as an Additional Sub Treasury Officer, Pollachi, Coimbatore District in July 2010 and was holding the said post till 28.02.2011. She was on medical leave from 01.03.2011 to

28.03.2011 and thereafter joined duty on deputation in the District Treasury, Coimbatore on 29.03.2011. However, she was under the pay roll in the Sub Treasury office, Pollachi till 30.6.2011. While she was serving as Additional Sub Treasury Officer at Pollachi, she was engaged in fixing the pension as per G.O.Ms.No.350, Finance(Pay Cell) Department dated 09.09.2009.

2.1. One Balachander filed a Writ Petition in W.P.No.498 of 2016 seeking direction in connection with his pensionary benefits. G.O.Ms.No.235 Finance (Pay Cell) Department dated 01.06.2010 was issued for revision of pension for pensioners based on the recommendation of the Financial Committee. Balachandar was also eligible to get his upgraded revision of pay scale applicable to the post of B.T Headmaster with effect from 01.10.2010. However, figures of pensionery benefit due to Balachandar as per the above G.O. has been wrongly entered. The pension benefit of one Balagangadaran was entered for Balachandar due to oversight. Hence, Balachander was drawing excess pension amount than what was due to him, between 01.10.2010 to 30.04.2015 for a period of 55 months accruing to Rs.9,56,058/-.

2.3. As per G.O.No.702 Finance (Pay) Department dated 07.10.1988 if over payments made to a pensioner is found out by the paying authority, executive orders for recovery can be passed and recovery can be made.

2.4. After affording an opportunity to Mr.Balachandar, recovery order vide proceedings in Na.Ka.1166/2015/A3 dated 04.05.2015 was served an him. As per the request of Balachandar a sum of Rs. 8,000/- per month was recovered from 01.10.2010 to 30.04.2015. Thereafter Balachander has filed a Writ Petition in W.P.No.498 of 2016 to quash the recovery proceedings and the said Writ Petition was allowed and the recovery order was set aside

2.5. In view of the direction given in ***M.Janaki Vs. The District Treasury Officer*** in ***W.P.(MD) No.23541 of 2015***, recovery was made against the petitioner who was in charge at the time when entries were made for disbursing excess pension to Balachandar under order G.O.(2U) No.52 dated 24.10.2018, after initiating the Disciplinary Proceeding against the petitioner. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. Heard, Mr.Sunny Akara, learned Counsel for the petitioner and Mr.J.Ravindran, learned Additional Advocate General for the respondents and perused the materials available on records.

4. Mr.Sunny Akara, learned counsel for the petitioner submitted that Balachandar has obtained an order to quash the recovery proceedings against him by suppressing the material facts that he was given with an opportunity before passing the recovery order. As per clause 8 (2)(b) of G.O.Ms.286, dated 28.08.2018, the ratio of responsibility in case of over payments shall be as under:

> *"(b) If the overpayment occurs due to reasons solely attributable to Pension Disbursing Authority i.e., Pension Pay Office, Chennai / District Treasury Office/ Sub-Treasury Office, the*

ratio of responsibility will be as under:

(a)	Dealing Accountant	50% of the overpaid amount
(b)	Additional Sub Treasury Officer/ Sub Treasury Officer concerned	25% of the overpaid amount
(c)	Assistant Treasury Officer concerned	25% of the overpaid amount

(In the forgoing, overpaid amount shall mean the amount that has been overpaid and is not recoverable from the employee/pensioner/ family pensioner concerned in accordance with the Hon'ble Supreme Court order in para -3 of the G.O. Ms. No.286 dated 28.08.2018)."

4.1. Though it is a joint and several responsibility, the recovery has been made only against the petitioner to recover a heavy sum of Rs.7,21,621/- in 60 instalments at the rate of Rs.13,621/-per month. The disciplinary proceedings issued against the Accountant was dropped. Apart from the recovery, the petitioner was also imposed with stoppage of two increments with cumulative effect. The petitioner was subjected to selective prosecution and it is a targeted harassment.

4.2. Even after knowing that the order in WP.No.498 of 2016 was obtained due to suppression of material facts, the 1st respondent had failed to file a Writ Appeal. A hefty share of his salary is being sought to be deducted without any due appreciation of the facts surrounding the incident and hence, the Writ Petition should be allowed.

5. Mr.J.Ravindran, learned Additional Advocate General for the respondents submitted that the petitioner who was an Additional Sub Treasury Officer, Sub Treasury, Pollachi had failed to check the arrears calculation and fixation of pension and the audit volume of the pensioner which is her primary duty. Without making proper scrutiny, the petitioner made a wrong entry and that had resulted in excess payment to Balachandar. The disciplinary proceedings initiated against another delinquent by name Kasthuri was dropped because she has not prepared and signed the connected Bills. Since the enquiry proceedings revealed that the petitioner is solely responsible for the excess payment, she was found guilty for the charges and punished. Since the excess payment was made to Balachandar only because of the fault on the part of the petitioner in compliance of G.O.Ms.286, Finance (Pension) Department, dated 28.08.2018 recovery proceedings have been issued against the petitioner.

5.1. In fact the above G.O.Ms.286, Finance (Pension) Department, dated 28.08.2018 itself has been passed consequent to the direction given by the Madurai Bench of this Court in W.P.(MD)No.23541 of 2015. Since the petitioner alone is responsible for all the mistakes, she cannot shriek away her responsibility and hence, the petition should be dismissed.

6. The unfortunate petitioner had made the entries for disbursal of pension as against Balachandar instead of making it against one Balagangahadaran and this has resulted excess pension being paid to Balachandar. The excess payment accrued to the tune of Rs. 9,56,058/-. Subsequently disciplinary proceedings have been initiated against the petitioner and yet another staff and ultimately the guilt against the petitioner was proved and and she was given with the punishment of stoppage of two increments with cumulative effect. However the charge against the other person was dropped.

7. It is true that as per clause 8 (2)(b) of G.O.Ms.286, Finance (Pension) Department, dated 28.08.2018, whenever over payments are made by the Dealing Accountant, the Additional Sub Treasury Officer/ Treasury Officer and the Assistant Treasury Officer are responsible to pay back the excess payment in the ratio of 50:25:25 [2:1:1]. But in the disciplinary proceedings, it is seen that the petitioner who is ultimately responsible for all the wrong entries, even though there was no confusion in preparing the bill and other related proceedings. Since the petitioner omitted to scrutinise the records properly before making the relevant entries as against the pensioners, it resulted in excess payment to Balachandar.

8. Even according to the respondents, Balachandar was aware of his undue excess payment, but he remained silent. Before issuing recovery proceedings against Balachandar for recovering the excess payment made to him, he was given with an opportunity to make his submission and in which, he accepted the receipt of excess payment and he requested to deduct it at the rate of Rs.8,000/- per month from his pension. The instalment pattern for recovery of a sum of Rs.7,21,621/- in 60 instalments would be Rs.12,000/- x 59 + Rs.13,621/- x 1. Some of the instalments have also been recovered from the pension amount of Balachandar.

9. Later, Balachandar filed a Writ Petition in W.P.No.498 of 2016 and obtained an order to quash the recovery proceedings and thus he got happily relieved. On perusal of the order in W.P.No.498 of 2016, it is seen that the Hon'ble Single Judge has chosen to allow the Writ Petition for the reason that excess payment has been made to a pensioner by name Balachandar for none of his fault. Reliance was placed on the case of ***State of Punjab and others Vs Rafiq Masih (White Washer) and others*** [reported in **(2015) 4 SCC 334**] popularly called as '*White Washer case'*. In the said judgement, it is held that no recovery can be imposed on a retired employee if the fixation of salary or any other monetary benefits was erroneously made and thus an excess payment was made to him. The relevant paragraph No.18 of the said judgment is extracted here under:

> *"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).

(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 employer's right to recover.*"*

10. The Hon'ble Supreme Court has charted out the above points on certain equitable grounds and not to allow any individual to enjoy an intentional unlawful enrichment. In the instant case, excess payment was made to Balachandar and he was also conscious of getting excess payment and at some point of time, he himself had requested to recover the excess payment in monthly instalments at the rate of Rs.8,000/- per month.

11. Having said that as an afterthought he filed the Writ Petition by suppressing the fact that he was given with a notice before recovery. By suppressing the material facts, he obtained an order in his favour.

12. The government respondents who are well aware of the dishonest intention in the mind of Balachandar in suppressing the material facts before the Court, ought to have filed a detailed counter by narrating the facts behind the recovery. At least after disposal of the writ, they ought to have obtained proper legal opinion and taken steps to file an Appeal. But the Government respondents omitted to do both.

13. No doubt the officer in-charge is responsible for excess payment and he/she should also face the consequences of his/her own negligent action. As per G.O.Ms.286, Finance (Pension) Department, dated 28.08.2018, if excess payment is made due to wrong pay fixation, the persons who are all dealing the bill and the payment is responsible for recovery. The case of the petitioner is on the distinct fact that she had ultimately made entires and during such course she had mistakenly posted the entry and hence, she alone was responsible for the mistaken excess payment and no one else. So it is unnecessary to get into the modus or other facts through which the excess payment was made to Balachandar.

14. If a person got the excess payment due to the mistake of someone else and enjoyed the same without knowing, it may not be fair on the doer to demand recovery of the excess at any future point of time from him. It is obviously because the person concerned would have utilised the amount without knowing that it was not the amount due to him and that he should pay it back.

15. But in the case in hand during the first receipt of the excess pension itself Balachandar would have been aware of the excess of Rs.11,051/-. Balachandar's monthly pension is Rs.12,149/- per month but a sum of Rs.23,200/- was credited in his account. After receiving the notice, he was even fair enough to accept the fact before the concerned authorities and agreed to get it recovered in instalments at the rate of Rs.8,000/- per month and that was also being carried out for some time.

16. However, in a subsequent Writ Petition filed by him, a direction has been given by the Madurai Bench of this Court in W.P.(MD)No.23541 of 2015 by taking into consideration of the loss sustained to the government for the fault of the officers who are responsible for making the excess payment. The officer who caused the excess payment cannot be allowed to go scot-free. But that cannot be the reason for allowing the other wrong doer to go scot-free, though he was conscious of the fact of recovering the excess payment which was not due to him.

17. If that is the spirit of issuance of the directions of the Hon'ble Supreme Court in *White Washer case (cited supra),* no one in the categories mentioned in that judgement will come forward voluntarily and accept the mistaken payment made to them, even though they were aware of the same at the time of receipt of it. So the respondents have wrongly understood the whole object and purpose of the directions of the Hon'ble Supreme Court and also the directions of Madurai Bench of this Court and had acted in a negligent manner.

18. The petitioner was made to suffer a monetary loss by way of loosing her two increment with cumulative effect. Even though it may not be the reason to show mercy on her and to relieve her from the loss caused due to her negligent actions, the respondents cannot write the entire liability on the head of the petitioner. It ought to have been brought to the notice of the Court during the proceedings in WP.No.498 of 2016 by stating that the case in hand is based on different facts and the amount involved was also hefty.

19. The responsibility fixed upon the officers to bear the loss should be in addition to the responsible action taken by the government against the person who enjoyed the wrongful benefit and perpetuated the same by making wrong representation before the Court. The proportionality of recovery fixed against the officers, in-charge of making excess payment alone will not absolve the responsibility of the respondents and that can not allow someone to take undue advantage of the situation and enjoy the wrong payment as a bounty given to him.

20. Even after the petitioner has filed this Writ Petition, the respondents did not think about challenging the order passed in WP.No.498 of 2016 by taking appropriate proceedings to condone the delay. So far as the petitioner is concerned, she was holding the seat of Additional Sub Treasury Officer for a short tenure. But the wrong payment continued to be made to Balachandar even after she got shifted from that section. While issuing orders for recovery against the official who was in-charge for the over payment, it should also be fair and proper for government to stop further such payments by putting proper check and balance in place.

21. Had there been an inspection at any frequent intervals, the mistaken entry could have been spotted and the wrong payment would not have accumulated to the tune of Rs.9,56,028/-. So the failure on the part of the respondents should not become a burden to be carried out by a single individual. Had the respondents challenged the order passed in W.P.No.498 of 2016 by properly placing all material facts before the Court and still failed, there can be some reason to resort to the whole of the recovery proceedings against the petitioner.

22. The government order in G.O.Ms.286 dated 28.08.2018 cannot be the short circuit to shriek away the responsibility, otherwise to be shouldered by the Government machinery. Despite general directions were given in the judgment of the Hon'ble Supreme Court if special facts of this case was brought to the notice to the Court and established how this is unique from the general application, that would have helped the learned single Judge to appreciate the matter in a different perspective. Since the respondents did not tackle the issue in a proper manner and have fixed the whole of the recovery from the purse of the petitioner, I feel it is appropriate to set aside the impugned order.

23. In the result, the Writ Petition is **partly allowed** and the impugned order passed by the 1 respondent in G.O.(2U) No. 52 Finance (T&A-I) Department, dated 24.10.2018 is set aside. However, this Court is not inclined to interfere with the stoppage of two increments with cumulative effect imposed as a punishment for the negligent act done by the petitioner. And the petitioner is not entitled to get the recovery of the amount so far recovered from her, until the whole of the recovery is made from Balachandar. Once the recovery process as against Balachandar is completed, the amount recovered from the petitioner shall be refunded to her. No costs. Consequently, connected miscellaneous petitions are closed.

08.01.2024

Index : Yes
Internet : Yes
Speaking
Neutral Citation : Yes

jrs

To

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   Secretariat, Chennai.

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R.N.MANJULA, J.

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