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W.P.No.17788 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.17788 of 2021
and W.M.P.No.18975 of 2021

R.Alamelu

... Petitioner

Vs.

1.The District Treasury Officer,
Salem, Salem District.

2.The Assistant Treasury Officer,
Sub Treasury Office,
Omalur, Omalur Taluk,
Salem District.

3.The Principal Accountant General (A & E),
Tamil Nadu, Chennai 18.

4.The Principal,
Government College of Engineering,
Salem 11.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 3rd respondent to restore the regular monthly family pension of Rs.9,907/- with arrears to the petitioner and pass orders.

For Petitioner : Mr.M.Elango



For Respondents : Mr.K.Surendran, GA for R1, R2 & R4
Mrs.Hema Muralikrishnan for R3

ORDER

This Writ Petition has been filed for the issuance of a Writ of Mandamus, to direct the 3rd respondent to restore the regular monthly family pension of Rs.9,907/- with arrears to the petitioner and pass orders.

2. Heard Mr.M.Elango, learned counsel for the petitioner, Mr.K.Surendran, learned Government Advocate for the respondents 1, 2 and 4 and Mrs.Hema Muralikrishnan, learned counsel for R3.

3. The petitioner's husband who was appointed as a Lab Assistant in the fourth respondent College had retired from service on 31.12.2012 and he died on 18.03.2015. He was receiving pension until his death. Thereafter, family pension was sanctioned to the petitioner at the rate of Rs.9907/- per month. All of a sudden, the third respondent has reduced her family pension from Rs.9907/- to Rs.5756/- with effect from 30.07.2021. On enquiry, the petitioner came to know that the said reduction was due to the excess payment given to the petitioner's husband



W.P.No.17788 of 2021

while he was in service.

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4. The learned counsel for the petitioner submitted that the respondents has no authority to recover the excess payment after the death of the Government Servant. The petitioner has given a representation on 29.07.2021 before the third respondent seeking to restore her regular family pension. But so far, the same has not been considered.

5. The learned counsel for the third respondent submitted that from the end of the third respondent only an audit objection was made with regard to the excess payment made to the husband of the petitioner and the third respondent has not passed any order for recovery as stated by the petitioner.

6. However, it is learnt that the petitioner's family pension has been reduced from Rs.9907/- to Rs.5756/- in view of the reasons stated by the petitioner. The excess payment if any made to the husband of the petitioner cannot be within the knowledge of the petitioner. It is learnt



W.P.No.17788 of 2021

that it is the second respondent who had reduced the family pension immediately after receiving an audit objection from the third respondent.

Before impacting the reduction of the family pension, the petitioner was not given with any opportunity by giving notice.

7. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Masih (White Washer) etc.* reported in *(2015) 4 SCC 334* , which has settled the position on this point as below:-

“18. It is not possible to postulate all situation 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 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



W.P.No.17788 of 2021

WEB COPY

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.”

8. Subsequent to the order of the Hon'ble Supreme Court made in the above case, a Government Order has been issued in G.O.Ms.No.286 dated 28.08.2018. Hence the recovery made from the petitioner's family pension is completely in violation of the above said Government Order. Therefore, the petitioner is entitled to get the refund of the reduction of pension so far made in connection with the alleged excess payment of



W.P.No.17788 of 2021

salary made to the petitioner's husband. The petitioner is at liberty to file a fresh representation in this regard to the respondents.

9. In the result, this Writ Petition is disposed and the petitioner is at liberty to give a fresh representation to the second and third respondents within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the second and third respondents are directed to consider and pass orders on the said representation in accordance with the above observation within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2024

Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes /No
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W.P.No.17788 of 2021

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R.N.MANJULA, J.

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