



W.P.No.16202 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Harini Amalraj .. Petitioner
Vs.
1. The Pension Payment Officer
Chennai – 600 035.
2. The Accountant General (A&E)
Anna Salai, Chennai – 600 018.
3. The State of Tamil Nadu
Rep. by its Secretary
Education Department
Fort St. George, Chennai – 600 009. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus, calling for the records relating to the 1st respondent's proceedings made in Na.Ka.No.O Va.A-121370/2023/H4 dated 23.09.2023, to quash the same and to consequently direct the respondents to refund the deducted family pension with interest at 24% per annum and to continue to pay the family pension thereon without any deductions.

For the Petitioner : Mr.L.Chandrakumar
For the Respondents : Mr.P.Ganesan
Government Advocate
for R1 and R3

Ms.J.Srividhya
for R2



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ORDER

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The present writ petition is filed challenging the order dated 23.09.2023 and consequentially to direct the respondents to refund the deducted family pension with interest at the rate of 24% per annum.

2. The case of the petitioner is that the petitioner's husband superannuated from service with effect from 29.02.2008. Thereafter, he died on 25.07.2022 and the petitioner was receiving family pension at the rate of Rs.24,765/-. While so, now, the impugned communication is issued, which only reads as the petitioner has to contact the first respondent office, but however, in the meanwhile, the respondents are resorting to recovery.

3. It is stated by the respondents that there was overpayment of the family pension to the petitioner to the tune of Rs.8,41,505/-. It is the contention of the petitioner that even if there was any overpayment of the family pension amount, the same cannot be recovered and therefore, the petitioner has approached this Court.



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4. When the matter came up for hearing, *Mr.P.Ganesan*, learned Government Advocate accepts notice on behalf of the respondents 1 and 3 and submits that a perusal of the impugned communication, it would be clear that it is clearly in the nature of a show-cause notice than any order passed. He would further submit that the same is already in the nature of a show-cause notice and the petitioner can raise all objections and only after hearing the petitioner, a final decision would be taken.

5. I have considered the submissions made by learned counsel appearing for the respective parties and have perused the material records placed before this Court.

6. Even though the impugned order dated 23.07.2023 is in the nature of a summon to the petitioner to contact the office of the first respondent, it can be seen that simultaneously, already the respondents are resorting to recovery from the family pension of the petitioner. Therefore, as rightly contended by the learned



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Government Advocate, the impugned notice can be treated as a show-cause notice and the respondents have to come to a final conclusion only after hearing the petitioner.

7. It is also the contention of the petitioner that as per the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Rafiq Masih***¹, such a recovery, cannot be resorted to at this point of time. Therefore, it would be open for the petitioner to raise all objections before the respondents and the respondents will consider the same. Even before considering the objections and passing final orders, the respondents cannot resort to recovery of the family pension.

8. In view thereof, this writ petition stands allowed on the following terms:

(i) the impugned order dated 23.09.2023 shall be treated as a show-cause notice and the petitioner will be entitled to make her detailed representation within a period of four weeks from the date of

¹ (2015) 4 SCC 334



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receipt a copy of this order and upon receipt of such representation, the respondents shall pass final orders after giving an opportunity of personal hearing to the petitioner;

(ii) Until such orders are passed, the rate of the family pension cannot be reduced nor any recovery can be resorted to from the family pension of the petitioner; and

(iii) The amount already deducted will be subject to the ultimate orders that would be passed by the respondents. If the respondents come to the conclusion that no amount is recoverable, the amount already deducted shall also be refunded to the petitioner.

There shall be no order as to costs. Consequently, W.M.P.No.17740 of 2024 is closed.

20.06.2024

Neutral Citation : Yes/No

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To:

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2. The Accountant General (A&E)
Anna Salai, Chennai – 600 018.
3. The Secretary
The State of Tamil Nadu
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D.BHARATHA CHAKRAVARTHY,J.

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