



Writ Petition No.28268 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.12.2024

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THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.28268 of 2019

&

WMP Nos.27946 of 2019 & 1962 of 2020

J.Jayanthi

..Petitioner

vs.

1.The Secretary,
Health and Family Welfare Department,
Fort St George,
Chennai

2.The Director,
Public Health and Preventive Medicine,
DMS Complex,
Teynampet,
Chennai-600 006

3.The Medical Officer,
Government Primary Health Centre,
Panamarathupatty,
Salem.

4.The District Treasury Officer,
Salem.

5.The Assistant Treasury Officer,
Sub Treasury,
Salem.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the proceedings in R.No.122/2018/A1 dated 07.05.2019 on the file of the third respondent and quash the same.

For Petitioner : Mr.S.C.Vishwanath

For Respondents : Mr.K.Tippu Sulthan, GA for R1 to 3
Mr.L.S.M.Hasan Fizal, AGP for 4& 5

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and the learned Additional Government Pleader appearing for the respondents 4 & 5 and perused the entire material available on record.

2.This Writ Petition has been filed by the wife of the deceased employee, who worked under the second respondent as a Multipurpose Health Supervisor and promoted as Block Health Supervisor. While he was in service, he died on 23.12.2018. Being the wife of the deceased employee, the petitioner is entitled to receive terminal benefits as well as family pension from the respondents 4 & 5. While so, the petitioner had been served with the impugned order issued by the third respondent vide



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proceedings in R.No.122/2018/A1 dated 07.05.2019 stating that the husband of the petitioner, while working, had drawn the pay in excess from 13.05.1999 to 07.11.2018 amounting to Rs.1,68,907/- and accordingly, it is informed that the said amount will be recovered from the DCRG amount payable to the petitioner, being the legal heir of the deceased Government servant. Challenging the said order, the present Writ Petition has been filed.

3.The learned counsel for the petitioner would submit that there is no misrepresentation or fraud played by the petitioner's husband to get the excess pay and as such the order of recovery of excess pay is not sustainable and the said order impugned in this petition is liable to be set aside. He would further contend that though it is claimed by the respondents that excess pay was drawn from 13.05.1999 to 07.11.2018, the respondents could not collect the same at the relevant point of time and they issued recovery order only after the demise of the husband of the petitioner, who died in harness on 23.12.2018.

4.The learned counsel for the petitioner has drawn the attention of this Court to the judgment rendered by the Hon'ble Apex Court in *Sahib Ram Vs.*



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The State of Haryana and Others reported in 1995 SCC Supl.(1) page 18

and also a judgment of the High Court in *S.A.Kanthimathi Vs. Director of School Education, Madras* reported in 2006 CJ (Mad) 3825 and submits that in view of the settled law, the order impugned in this Writ Petition is unsustainable and accordingly, sought to set aside the same by allowing the Writ Petition.

5.On the other hand, the learned Additional Government Pleader appearing for the respondents 4 & 5, while reiterating the averments made in the counter affidavit filed by the respondents, would submit that admittedly there was excess payment made to the petitioner's husband from the year 1999 to 2018 at different stages and after noticing the excess payment, in order to recover the same, the impugned order was issued with a view to protect the public exchequer. He would further submit that in the impugned order, all the particulars were furnished by the respondents to prove that the excess payment was made to the husband of the petitioner, for which, he was not entitled and as such, the recovery order has been rightly passed, which requires no interference. Accordingly, he submits that there is no substance in the Writ Petition and sought to dismiss the same.



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6.Ultimately, he pointed out that in fact, the petitioner gave consent on 08.05.2019 to recover the excess amount claimed in the impugned order dated 07.05.2019 and accordingly, the said amount was rightly recovered from the petitioner.

7.Having considered the facts and circumstances of the case and submissions made by the respective counsels, the only issue to be considered in this Writ Petition is, whether the order of recovery passed by the third respondent vide impugned proceedings, dated 07.05.2019 is sustainable under law or not?

8.It is an admitted fact that the husband of the petitioner, while working as Block Health Supervisor under the second respondent, died on 23.12.2018. After his demise, the third respondent issued impugned proceedings dated 07.05.2019 to recover the amount which claimed as excess payment for a sum Rs.1,68,907/- from DCRG amount payable to the petitioner being the legal heir of the deceased Government servant.



9.It is brought to the notice of this Court that this Court vide order dated 25.09.2019 passed interim stay of the impugned order, however, on 27.09.2019, an amount of Rs.1,68,907/- has been recovered from the DCRG amount payable to the petitioner.

10.The contention of the learned Additional Government Pleader is that as the petitioner consented for recovery of the said amount vide her written consent letter submitted on 08.05.2019, accordingly, the said amount was recovered. Thereafter, this Writ Petition has been filed against the said order of recovery, which is not sustainable under law.

11.But in the opinion of this Court, inasmuch as the order of recovery issued by the third respondent is unsustainable under law, in the light of the settled legal proposition, the consent given by the petitioner on 08.05.2019 towards recovery, will not have legal sanctity and the same cannot be relied upon by the respondents. The petitioner, who is unaware of the settled legal dictum in the matter of recovery of excess amount paid without fault of the employee, might have been under apprehension at that relevant point of time that if the amount claimed in the impugned order is not recovered, she



may not even get the family pension, under such circumstances, she might have given the consent towards recovery.

12. Therefore, the contention of the respondents that having received the consent of the petitioner only, they recovered the amount on 27.09.2019, in the opinion of this Court, has no substance in the eye of law.

13. Actually, in the matter of withdrawal of excess pay by the husband of the petitioner, he had no role and it was not paid at his instance. The excess pay was not paid to him on his misrepresentation or any fraud played by him. It is done by the respondent officials only and as such, for the mistake committed by the respondents in payment of excess pay, now after the demise of the husband of the petitioner, the petitioner cannot be penalized by recovering the said amount from the DCRG amount payable to the petitioner, for which, the petitioner is legally entitled.

14. The opinion of this Court fructified by the judgment of the Hon'ble Apex Court in "***Sahib Ram Vs. The State of Haryana and Others***" reported in 1995 SCC Supl.(1) page 18 and also a judgment of the High Court in



“S.A.Kanthimathi Vs. Director of School Education”, Madras reported in

2006 CJ (Mad) 3825. The relevant portion from the decision in **“Sahib**

Ram's case (cited supra) in para no.5 is extracted hereunder:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstance the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any mis-representation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The Principle of equal pay for equal work would not apply to the scale prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

15. In an identical matter, this Court, in its judgment in **S.A.Kanthimathi's case** (cited supra) has held in paragraph 4 as extracted herein under:

“4. In the said judgment of the Supreme Court, it is clearly stated that since the salary is paid not on account of any



misrepresentation made by the appellant and the benefit of higher scale of pay was made by the wrong instruction made by the Principal for which, the appellant cannot be held to be at fault. The facts in the said judgment applies to the facts in this case also, and therefore, the impugned order of recovery is quashed. Writ Petition is allowed. No costs.”

16. In the present case also, excess payment was not made on account of any misrepresentation made by the petitioner. Therefore, for the reasons stated above and by following the judgments stated supra, this Court is of the considered opinion that the order dated 07.05.2019 impugned in this Writ Petition, is unsustainable and it is liable to be set aside.

17. Accordingly, this Writ Petition is allowed with the following directions:

(i) the order impugned in this Writ Petition, dated 07.05.2019 passed by the third respondent, is hereby set aside.

(ii) the respondents are directed to refund the amount recovered from DCRG amount payable to the petitioner, within a period of four(4) weeks from today with 6% interest to be calculated from 27.09.2019 till the actual date of refund.



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iii) No costs.

iv) Consequently, connected miscellaneous petitions are closed.

06.12.2024

Index : Yes/No

Speaking order: Yes/No

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Note: Issue order copy by 09.12.2024



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To

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Health and Family Welfare Department,
Fort St George,
Chennai

2.The Director,
Public Health and Preventive Medicine,
DMS Complex,
Teynampet,
Chennai-600 006

3.The Medical Officer,
Government Primary Health Centre,
Panamarathupatty,
Salem.

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BATTU DEVANAND, J

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