IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.25026 of 2010 and
M.P. No.1 of 2010

S. Leelavathi ... Petitioner

Vs.

1. The Secretary to Government,
   Finance Department,
   Fort St. George,
   Chennai 600 009.

2. The Accountant General,
   The Accountant General Office,
   Teynampet, Chennai 600 018

3. The Sub Treasury Officer,
   Sub Treasury Office,
   Nannilam, Tiruvarur District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of declaration or any other writ or order of similar nature declaring that the reduction of pensionary benefits of the petitioner from 13.06.2023 to July 2007 reducing the pension from Rs.2,800/- to Rs.1680/- is null and void and consequentially directing the respondents to refund the attached amount of Rs.62,445/- from the date of pension.

For Petitioner : Mr. A.R. Nixon, Senior Advocate

For R1	:	Mr. U. Bharanidharan Additional Government Pleader
For R2	:	Mr. P. Mano Rajan for Mr. T. Ravi Kumar, Senior Counsel
For R3	:	Mr. P. Ganesan, Additional Government Pleader.

ORDER

Though this Writ Petition has been filed challenging the action of the respondents in reducing the family pension of the petitioner from Rs.2,800/- to Rs.1680/- and seeking refund of the amount recovered from the petitioner to the tune of of Rs.62,445/-, learned counsel for the petitioner restricted the relief only to an extent of the amount recovered from the petitioner.

2. This is a case where the petitioner herein was granted family pension on the death of her husband who served as a secondary grade teacher in the Tamil Nadu Education Subordinate Service. The family pension that was initially fixed and paid to the petitioner at Rs.1,680/- was revised to Rs.2,800/- in terms of G.O. MS. No.446 fin (Pens) dated 18.09.2007. However, subsequently, the respondents having realised that since G.O. M.S. No.446 dated 18.09.2007, has no application to the case of the deceased husband of the petitioner, revised the pension of the

petitioner by refixing the same at Rs.1,680/- and ordered to recover an amount of Rs.62,445/- stated to have been paid in excess of entitlement of the petitioner. As the counsel for the petitioner has restricted the relief only to an extent of the amount recovered from the petitioner, this Court is not examining the validity of the re-revision of the pension of the petitioner.

3. It is now settled law that no recovery can be effected from the persons who are about to retire or the persons who already retired from service in case if any amounts are paid in excess of their entitlement without any involvement of the persons concerned. Law in this regard is well settled as per the decision of the Hon'ble Apex Court in the case of ***State of Punjab and others vs.Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334***, wherein it has been held thus:

> *"**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 hereinabove, 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 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."

In the light of the above, in terms of Clause (ii) in paragraph 18, no amount can be recovered from a person who already retired from service. The recovery of the amount of Rs.62,445/- from the family pension of the petitioner cannot also be sustained as this is a case where the employee is no more and the amount that was recovered is from the petitioner's family pension.

4. In the circumstances, the recovery of Rs.62,445/- cannot be

sustained. Accordingly, the Writ Petition is partly allowed directing the respondents to refund the amount of Rs.62,445/-, if already recovered from the petitioner, within a period of six (6) weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.01.2025

Index : Yes/No
Speaking Order : Yes/No
bga

To:

1. The Secretary to Government,
   Finance Department,
   Fort St. George,
   Chennai 600 009.

2. The Accountant General,
   The Accountant General Office,
   Teynampet, Chennai 600 018

3. The Sub Treasury Officer,
   Sub Treasury Office,
   Nannilam, Tiruvarur District.

MUMMINENI SUDHEER KUMAR,J.

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