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WP No. 31194 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2025

CORAM

THE HONOURABLE MR.JUSTICE T. VINOD KUMAR

WP No. 31194 of 2019

1. Tmt.Mohamedunnisa Begum,
W/o.R.Yehasanullah (Late),
No. 24/120, Bilai Rabi Street,
Labbaikudikkadu -621 108,
Kunnam Taluk,
Perambalur District ,
Perambalur

Petitioner(s)

Vs

1. The Director of Elementary
Education,
College Road, Chennai 6.

2.The District Elementary Educational
Officer,
Perambalur District, Perambalur

3.The Assistant Treasury Officer,
Sub Treasury, Kunnam and Post,
Perambalur District

Respondent(s)

PRAYER

This writ petition has been filed seeking for issuance of Writ of a Certiorari, to call for records pertaining to the orders of the 3rd respondent in Na. Ka. No. 680/2019/A dated 15.10.2019 relating to recovery from the family



pension (PPO No. F455093) of the petitioner and quash the same.

For Petitioner(s): Mr.S.Kamadevan

For Respondent(s): Ms.A.Bakkiyalakshmi, Govt
Advocate, for R1 & 2

ORDER

This writ petition is filed, for issuance of a Writ of Certiorari, to call for records pertaining to the orders of the 3rd respondent in Na. Ka. No. 680/2019/A dated 15.10.2019 relating to recovery from the family pension (PPO No. F455093) of the petitioner and quash the same.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

3.The case of the petitioner in brief, is that her husband was appointed as Secondary Grade Teacher on 20.12.1957 in Elementary School and after working for 32 years, had retired from service on 30.06.1989; and that he had deceased on 22.06.2010.

4.It is further case of the petitioner that her husband on attaining the age of superannuation had retired from service; that he was granted pensionary benefits; that after his demise on 22.06.2010, she being the family member, was



granted family pension as per the applicable Rules and Regulations; and that she is being paid the family pension since, July, 2010.

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5. The petitioner contended that all of a sudden, the third respondent issued impugned proceedings dated 15.10.2019, claiming that the pension of her husband was wrongly fixed, resulting in excess payment of Rs.4,34,556/-; that the said amount of excess pension paid is to be recovered in 68 installments at Rs.6373/- each and last one installment at Rs.1192/-, in all aggregating to Rs.4,34,556/-; and that as per calculation sheet attached to the said proceedings, the excess payment of pension was alleged to have been made during the period of first April, 1999 onwards.

6. The petitioner further contended that the respondents have fixed the pension during the life time of her husband and paid the pension to her husband till his demise in the month of June 2010 and thereafter, have been paying family pension to her since, July 2010, cannot be allowed to claim that there has been excess payment of pension to her husband during his life time and the family pension to her thereafter. Thus, it is contended that the impugned proceedings issued seeking recovery of the alleged excess payment, is wholly illegal and arbitrary.



7. Per contra, the respondents by counter affidavit, contended that the petitioner's husband though initially was appointed as Secondary Grade Teacher, was subsequently posted as Elementary School Headmaster and promoted to the post of Middle School Headmaster on 16.12.1980; that thereafter, he was posted as Upper Middle School Headmaster on 01.06.1988; and that while working as Middle School Head Master, retired from service on 30.06.1989 on attaining the age of superannuation.

8. By the counter affidavit, the respondents further contended that net qualifying service of the deceased employee for pension was 25 years 3 months and 9 days and taking into consideration the aforesaid eligible qualifying service, pension was fixed and revised from time to time.

9. By the counter affidavit, it is further contended that the deceased employee i.e., the petitioner's husband while claiming the benefit of G.O.Ms.No.200, Finance(Pay Cell) Department dated 18.05.1999, had declared himself as Special Grade Teacher and based on the said claim, the pension was revised, which resulted in excess payment to the deceased employee and after his demise, the family pension is also being paid to the petitioner herein.

10. The respondent, by the counter affidavit, further contended that since,



the excess payment of pension was made firstly to the deceased employee on account of his declaration as Special grade Teacher and after his demise, to the petitioner in the form of family pension, which mistake was noticed during the audit inspection by the office of Regional Joint Director of Treasuries and Accounts, the authorities have issued the impugned proceedings to recover the excess payment and thus, the said action cannot be termed as illegal.

11. When the matter was taken up for hearing today, learned Government Advocate appearing for the respondents submitted that the petitioner had herself given a letter dated 18.07.2025 agreeing to pay the excess amount claimed, in monthly instalments of Rs.1000/- per month but not as per the impugned proceedings and thus, the respondents should be permitted to recover the aforesaid amount.

12. I have taken note of the respective contentions urged before this Court.

13. Though the respondents by the impugned proceedings, had claimed that on account of the audit inspection caused by the Regional Joint Director of Treasuries and Accounts on 10.07.2019, the mistake of excess claim of pension by the deceased employee i.e., the petitioner's husband, due to the wrong claim made by him of he being entitled to special grade pay, was unearthed and thus,

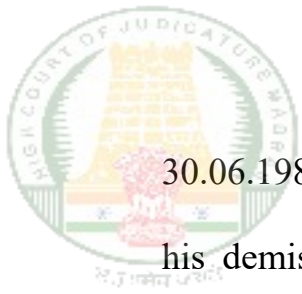


the same is sought to be recovered, it is to be noted that no such claim was made during the life time of the petitioner's husband, but is being made after about 9 years of his demise.

14. Further, the deceased employee drew his pension on the basis of G.O.Ms.No.200, Finance(Pay Cell) Department dated 18.05.1999, which was issued in the year 1999 and thus, from the year 1999 till 2010, the respondents did not seek to verify the correctness of the claim made by the deceased employee. Even thereafter, the respondents, did not take any steps to verify the records while granting the family pension to the petitioner.

15. Though it is stated that the aforesaid mistake having been noticed during the audit inspection in the month of July, 2019, it cannot be presumed or accepted that there has been no audit from the period when pension was granted to the deceased employee on retiring from service or he having made a wrong claim by declaring himself as entitled for Special grade pay, prompting the respondents to claim that the said mistake having been noticed only in the month of July, 2019, and the respondents thus taking action to recover the excess payment now.

16. The fact of the deceased employee having retired from service on



30.06.1989 and thereafter, the pension having been fixed and paid from 1989 till his demise on 22.06.2010 for about 21 years and thereafter, family pension being paid to the deceased employee's wife i.e., the petitioner herein from July, 2010 onwards, the action of the respondents in seeking to recover an amount of Rs.4,34,556/- claiming the same as excess pension paid, in the considered view of this Court, on account of the passage of time from the date of fixation of pension and the payment thereof, cannot be permitted.

17.Further, it is also to be noted that if there is any lapse on the part of the respondents in allowing a mistake to continue for such a long period of time, the authorities cannot be allowed to recover the alleged amount claiming that the same was excess payment of pension, for no fault of either the deceased employee or the petitioner, who is only a recipient of family pension.

18.Insofar as undertaking stated to have been submitted by the petitioner, agreeing for deduction of Rs.1000/- per month towards payment of excess pension is concerned, it is to be noted that the aforesaid undertaking was obviously obtained, from the petitioner as she was required to appear before the authorities for giving Life Certificate in order to receive the family pension. Thus, the said undertaking given by the petitioner cannot be considered as having been given voluntarily, as the wording used in the certificate indicates



the same to be a tutored undertaking by the respondents. It is also on account of the fact that the petitioner could not have given such alleged undertaking on her own, as this Court had restrained the respondents from recovering the aforesaid amount by interim order dated 05.11.2019. Thus, the reliance placed by the respondents on the undertaking is of no consequence.

19. It may not be out of place to note that the petitioner, who is in receipt of the family pension, is now, aged about 82 years and when she was about 75 years, the respondents issued the impugned proceedings, seeking to recover the alleged excess payment of pension paid to her husband and family pension paid to her. The said act on the part of the respondents in issuing such recovery proceedings, without taking note of the senior citizen status of the petitioner, only goes to show that the tall claims being made by the State as to it being a welfare oriented and taking care of senior citizen, is only on paper, but not in action.

20. Further, this Court in similar circumstances, vide order dated 21.03.2025 in WP (MD) No.22607 of 2022, having held that the excess payment of pension cannot be recovered from the pensioner or from the family pensioner, the order impugned in the present writ petition, cannot be sustained.



21. Accordingly, the Writ Petition is allowed and the impugned order of the 3rd respondent in Na. Ka. No. 680/2019/A dated 15.10.2019 is set aside. No costs.

05-12-2025

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Index: Yes/No

Neutral Citation: Yes/No



To

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2. The District Elementary Educational Officer,
Perambalur District, Perambalur
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