BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.600 of 2025 &
C.M.P.(MD)No.4449 of 2025

1.The Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai.

2.The Treasury Officer,
District Treasury Office,
Tuticorin. ... Appellants

Vs.

J.Punitha Rani ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.21720 of 2016, dated 14.07.2023.

For Appellants :Mr.M.Sarangan,
Additional Government Pleader

For Respondent :Mr.G.Mohankumar

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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The Writ Appeal is preferred by the respondents in the writ petition challenging the order dated 14.07.2023 passed in in W.P.(MD)No.21720 of 2016.

2. The writ petition was filed to quash the impugned order dated 21.12.2016. Through the said order, the Treasury Officer intended to recover the excess family pension payment made to the writ petitioner.

3. The brief facts are that, the petitioner's mother was working as Secondary Grand Teacher and she died on 14.04.1998. The petitioner is the widowed daughter of the deceased mother. On 28.11.2011, vide G.O.Ms.No.325, Finance (Pension) Department, dated 28.11.2011, the first respondent in the writ petition / Secretary to Government, Finance (Pension) Department, extended family pension to the widowed daughter, even though, they had completed the age of 25. In the said Government Order, the amount of family pension was not fixed. The Accountant General Office, has fixed the family pension at Rs.4,543 with

effect from 23.04.2012, vide order dated 17.08.2012. From 23.04.2012, the petitioner was receiving family pension at the rate of Rs.4,543/-. But suddenly, on 31.01.2013, the first respondent issued G.O.Ms.No.29, Finance (Pension) Department, dated 31.01.2013, fixing the family pension at Rs.3,050/- with Dearness Allowance of Rs.100/-. Thereafter, from May 2016 onwards, the petitioner is receiving family pension at the rate of Rs.3,050/- per month. On 21.10.2016, the Treasury Officer issued the order impugned in writ petition stating the family pension was wrongly fixed at Rs.4,543/-, hence the excess amount of Rs.1,42,721/- has been paid to the petitioner from 23.04.2012. The notice further states, if the amount is not repaid, the same would be recovered from the family pension from November 2016 onwards. Challenging the said recovery order, the writ petition was filed.

4. The writ Court after considering the case of the writ petitioner, has held that the said order was passed without grating any opportunity, thereby, violating the principles of natural justice. The writ Court had relied on the order dated 19.11.2021 passed in W.P.(MD)No.669 of 2018. The writ Court further relied on the Judgment passed in *State of Punjab vs. Rafiq Mashi reported in (2015) 4 SCC 334 [hereinafter referred as 'Rafiq Mashi case']*, wherein, it is held, recovery

from employees belonging to clause C and D service is impermissible. Further the Writ Court had held such recovery would be harsh in the circumstances of the case and thereby set aside the order passed by the appellants. Aggrieved over the same, the present writ appeal is filed.

5. It is seen the appellants had detected the mistake within a period of 9 months and has issued G.O.Ms.No.29, Finance (Pension) Department, dated 31.01.2013, by re-fixing the family pension at the rate of Rs.3,050/- per month. However, failed to implement the same from the date of government order i.e. from 2013 onwards. But suddenly woke up in the year 2016 and issued the recovery order. It is a clear mistake on the part of the appellants. Further, as rightly held by the Writ Court, the recovery would be very harsh in the hands of the writ petitioner, since the petitioner is a widowed daughter and the petitioner's mother would come under Clause C employee. As per *Rafiq Mashi case*, recovery is impermissible from the employees belonging to clause C and D. It is pertinent to state from May 2016 onwards, the petitioner's family pension is re-fixed at the rate of Rs.3,050/- and the petitioner is receiving Rs.3,050/- only per month. The appellants have rightly re-fixed the correct pension and the writ petitioner is entitled to receive only the re-fixed family pension. Therefore, the recovery to the tune of Rs.1,42,721/- cannot be permitted based on the *Rafiq Mashi case* and the

Writ Court has rightly held the recovery is impermissible as per *Rafiq Mashi case*. It is made clear that the appellants shall not recover any amount. However, the appellants shall re-fix the correct family pension, if not refixed and disburse the same from May 2016 onwards.

6. For the reasons stated supra, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[J.N.B., J.] [S.S.Y., J.]
19.03.2025

Index :Yes / No
NCC :Yes / No
Speaking / Non-speaking order

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J.NISHA BANU, J.

and

S.SRIMATHY, J.

mbi

W.A(MD)No.600 of 2025

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