



WP(MD).10132 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2025

PRONOUNCED ON : 21.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

WP(MD)No.10132 of 2021
WMP(MD)Nos.7857 and 7858 of 2021

L.Annamalai, S/o.A.M.Lakshmanan
D.No.19, 3rd Street, Koodal Nagar, Thirumayam Road
Pudukottai District

Petitioner(s)

Vs

1. The Accountant General (A&E), Anna Salai
Teynampet, Chennai-18
2. The Director of Agriculture, Chepauk, Chennai
3. The Treasury Officer, the District Treasury
Pudukottai

Respondent(s)

Prayer:- This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd Respondent in Na.Ka.No.137/E1/2021, dated 21.05.2021 and to quash the same and consequently to forbear the Respondents from recovering any amount from the Petitioner 's Pension Account PPO.No.RO713261 in future.

For Petitioner (s) : Ms.Shunmalar for Mr.K.Veilmuthu

For Respondent(s) : Mr.D.Sadiq Raja, AGP

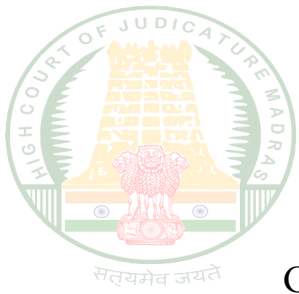


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ORDER

1. This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd Respondent in Na.Ka.No. 137/E1/2021, dated 21.05.2021 and to quash the same and consequently to forbear the Respondents from recovering any amount from the Petitioner's Pension Account PPO.No.RO713261 in future.
2. The facts of case, in a nutshell, led to filing of this Writ Petition and necessary for disposal of same, are as follows:-
 - a) The Petitioner had joined as an Agricultural Officer on 24.01.1980 in the 2nd Respondent Department and he retired on 30.04.2014. The Petitioner had been paid with the pensionary benefits and at present, he is receiving the pension at the rate of Rs.43,921/- p.m. from the Office of the 3rd Respondent, as per PPO No.RO-713261. While so, the 3rd Respondent had passed the impugned order, in Na.Ka.No.37/E1/2021, dated 21.05.2021, stating that since the Petitioner was paid inadvertently with the enhanced revised pension to the tune of Rs.2,43,682/-, as per the 7th Pay Commission from 01.10.2017, which he is not entitled to, in view of the relevant



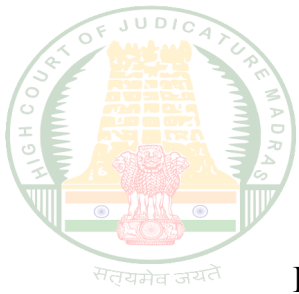
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Government Order, the Petitioner had to repay the said sum, within a month, failing which, recovery would be effected from his monthly pension.

b) The Petitioner being a retired Government Servant, he and his family are solely dependent on the pensionary benefits for their day to day needs. The Petitioner has not willfully suppressed or misrepresented any material fact for receiving the enhanced pension and therefore, the act of the 3rd Respondent in initiating recovery proceedings is completely unsustainable in law. Hence, contending that unless the impugned order of recovery is set aside, he will be put to irreparable loss and hardship and his day today life would be very much affected, since he is the sole bread-winner of the family and relying on various decisions of the Honourable Supreme Court and the High Courts, passed in similar circumstances, this Writ Petition has been filed, seeking the prayer as stated above.

3. In the counter affidavit filed by the 3rd Respondent, it is stated as follows:-

a) The Petitioner, as an Agriculture Officer, retired on 30.04.2014. The Petitioner's pay was fixed in accordance with the VI Pay Commission implemented in Go.Ms.No.234 Finance (Pay Cell)



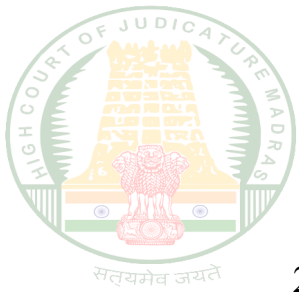
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Department, dated 01.06.2009 giving notional effect from 01.01.2006 and monetary effect from 01.01.2007. One Man Commission was constituted to examine the pay anomaly. Accepting the report of the One Man Commission, the Government issued orders in GO.Ms.No.254 to 340 Finance (Pay Cell) Department, dated 31.03.2010, enhancing the pay of the various Department Officials and the Petitioner's pay was fixed in accordance with the above said GO and in accordance with the last pay drawn by him.

b) Subsequently, since some Departments agitated the higher revision of pay to the Technical Service Officials, the Government has refixed the pay scales of some of the Officials. As against the same, a batch of Writ Petitions in WP.No.7006 of 2011 were filed. This Court, by order dated, 08.03.2012, while dismissing the writ petitions, directed the Government to constitute a Pay Grievance Redressal Cell to hear the grievance of all the affected persons. Accordingly, the Government issued orders in G.O.Ms.No.242 Finance (Pay Cell) Department, dated 22.07.2013, revising the pay scales for certain categories on the recommendation of the Pay Grievance Redressal Cell.

c) The Division Bench of this Court, in their judgment dated

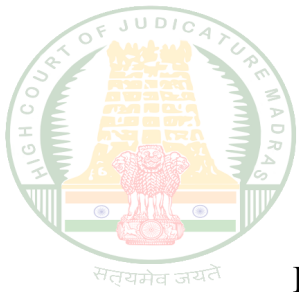


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27.02.2014, in W.A.No.504 of 2012, directed the Government not to implement the G.O.Ms.No.71, dated 26.02.2011 and G.O.Ms.No. 242, dated 22.07.2013, till fresh decision is taken in the Special Leave Petitions filed by both the parties. The Government, by the G.O.Ms.No.328 Finance (Pay Cell) Department, dated 31.10.2017, directed the employees to give option either to revise their pay in the revised pay structure as per the GO.No.242, dated 22.07.2013 or to continue to draw the pay, which is drawn by them based on the interim orders of the Court, whichever is financially advantageous to them and the option so exercised would be subject to the outcome of the final verdicts of the Courts.

- d) Since the Petitioner's pension was fixed inadvertently as per the 7th Pay Commission Order in E.Pension portal, for which, the Petitioner was not eligible as per the G.O.Ms.No. 328 dated 31.10.2017, the Petitioner was directed to repay the excess payment of pension paid to him. In G.O.Ms. No. 328 Finance (Pay Cell) Department dated 31.10.2017, the Government has ordered that all category of employees, who have filed Court cases and are drawing higher pay scales/pension by virtue of Court orders till date, shall be permitted to migrate to the revised pay structure based on the G.O.Ms.No.242

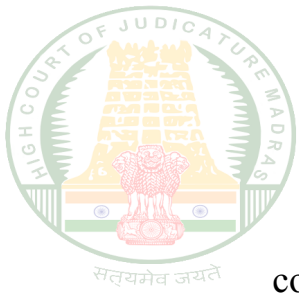


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Finance (Pay Cell) Department dated 22.07.2013. Such employees shall exercise option to revise their pay in the above manner or to continue to draw the pay, which is drawn by them presently based on the interim orders of the Court, whichever is financially advantageous to them.

- e) Since the Petitioner's pension was fixed in the 7th Pay Commission order as per higher pay scale, the Petitioner was informed by the impugned order, in Na.Ka.No.137/E1/2021, dated 21.05.2021 to offer his remarks whether, the Petitioner is willing to repay the excess amount of pension paid to him in lump sum or to recover from his monthly pension.
- f) As per the G.O.Ms. No. 328 dated 31.10.2017, the Petitioner is entitled pension only either as per the higher pay scale without revising his pension as per the 7th Pay Commission or entitled to fixation of pension as per G.O.Ms.No.242 dated 22.07.2013 and re-fixation under the 7th Pay Commission. The Petitioner has not given any option and therefore, the pension was worked out as per the higher scale of pay and hence, excess amount paid to the Petitioner has to be recovered.

4. This Court heard Ms.Shunmalar for Mr.K.Veilmuthu, the learned



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counsel for the Petitioner and Mr.D.Sadiq Raja, the learned Additional Government Pleader for the Respondents.

5. The learned counsel for the Petitioner has submitted that the enhanced pension amount was paid to the Petitioner only in accordance with the 7th Pay Commission's Recommendations and that the impugned order had been passed, without giving sufficient opportunity or show cause notice to the Petitioner, thereby violating the principles of natural justice and that when there was no misrepresentation or fraud on the part of the Petitioner for receiving the enhanced pension amount, recovery of the same cannot be permissible in law, that too, after a long duration of period after his retirement. The learned counsel would further submit that the pension cannot be recovered from the Pensioner, even if an excess amount has been paid by way of either mistake or wrong fixation or inadvertendly. The learned counsel would further submit that recovery cannot be made from the retired employees and hence, the impugned order is not sustainable and consequently, the Respondents may be directed to continue to pay the pension at the rate, at which the Petitioner is drawing presently, by allowing this Writ Petition.

6. In support of his contentions, the learned counsel for the Petitioner



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has relied on the following decisions:-

- i. **2015 4 SCC 334 (State of Punjab Vs. Rafiq Masih (White Washer) and others.**
- ii. **2009 3 SCC 475 (Syed Abdul Qadir Vs. State of Bihar)**
- iii. **Judgement and order, dated 26.07.2019 made in WP(MD)No.20358 of 2014 (C.Rajeswari Vs. The Accountant General (A&E), Chennai and others of the Madurai Bench of the Madras High Court.**

7. The learned counsel for the Respondents, while reiterating the averments made in the counter affidavit filed by the 3rd Respondent, submit that since the Petitioner's pension was fixed inadvertently, as per the 7th Pay Commission Order in E.Pension portal, for which, the Petitioner was not eligible, as per the G.O.Ms.No.328 dated 31.10.2017, the impugned order, directing the Petitioner to repay the excess payment of pension is in order and hence, this Writ Petition is not sustainable and consequently, the Respondents are entitled to recover the said excess pension amount paid from the Petitioner, as per the impugned order.
8. I have given my careful and anxious consideration to the contentions put forward by the learned counsel on either side and also perused the entire materials available on record.
9. On perusal of the records, it is seen that admittedly, the Petitioner

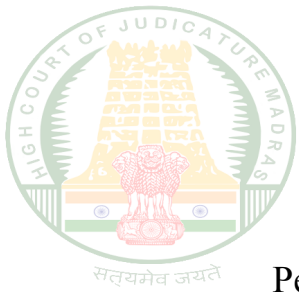


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had joined as an Agricultural Officer on 24.01.1980 in the 2nd Respondent Department and he retired on 30.04.2014. After his retirement, the Petitioner had been paid with the pensionary benefits and at present, he is receiving the pension at the rate of Rs.43,921/- p.m. as per PPO No.RO-713261. The impugned order of recovery was passed on 21.05.2021. There is also an interim order of stay of recovery alone passed by this Court on 16.06.2021 in force till date.

10. It is the case of the Respondents that as per the One Man Commission recommendations, the Petitioner's pay was enhanced and fixed in accordance with the GO.Ms.No.254 to 340 Finance (Pay Cell) Department, dated 31.03.2010. As per the G.O.Ms.No.242 Finance (Pay Cell) Department, dated 22.07.2013, the pay scales for certain categories were revised on the recommendation of the Pay Grievance Redressal Cell. The Government, by the G.O.Ms.No.328 Finance (Pay Cell) Department, dated 31.10.2017, directed the employees to give option either to revise their pay in the revised pay structure as per the G.O.No.242, dated 22.07.2013 or to continue to draw the pay, which is drawn by them based on the interim orders of the Court. Since the Petitioner's pension was fixed inadvertently as per the 7th Pay Commission order in E.Pension portal, for which, the

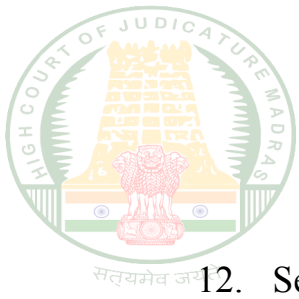


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Petitioner was not eligible as per the G.O.Ms.No. 328 dated 31.10.2017, the Petitioner was directed to repay the excess payment of pension, by the impugned order. As per G.O.Ms. No. 328 dated 31.10.2017, the Petitioner is entitled for pension only either as per the higher pay scale without revising his pension as per the 7th Pay Commission or entitled to fixation of pension as per G.O.Ms.No.242 dated 22.07.2013 and re-fixation under 7th Pay Commission. The Petitioner has not given any option and therefore, the pension was worked out as per higher scale of pay and hence, the excess amount paid to the Petitioner has to be recovered.

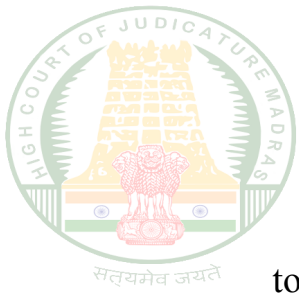
11. Be that as it may, firstly, it is to be seen that whether there was sufficient opportunity or show cause notice given to the Petitioner before passing the impugned order of recovery of the excess pension amount paid to him. There is no material evidence to show that the Petitioner was given sufficient opportunity or show cause notice before passing the impugned order. Thus, it is established that the Petitioner was not given sufficient opportunity or a show cause notice at all before passing the impugned order of recovery. Hence, the impugned order is in violation of principles of natural justice. On this ground, the impugned order is vitiated.



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12. Secondly, even assuming that there was sufficient opportunity or show cause notice given to the Petitioner, it is to be seen as to whether the impugned order, directing the Petitioner to repay the excess pension amount paid to him, after a long duration of time after the retirement of the Petitioner, is permissible in law or whether there is any misrepresentation or fraud on the part of the Petitioner for receiving the excess pension amount.
13. In this case, admittedly, the Petitioner retired on 30.04.2014. The Petitioner had been paid with the pensionary benefits. Thereafter, the Petitioner was paid with the revised pension as per the 7th Pay Commission from 01.10.2017. At present, he is receiving the pension at the rate of Rs.43,921/- p.m. The impugned order of recovery was passed very much belatedly on 21.05.2021 after more than five years after his retirement.
14. At this juncture, in the above said facts and circumstances, it would be appropriate to refer to the decision of the Honourable Supreme Court rendered in the case of **State of Punjab Vs. Rafiq Masih (White Washer) and others, reported in 2015 4 SCC 334**, on the question of permissibility of the Respondents/Recovering Authorities



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to recover the excess payments. In the said decision, the Honourable Supreme Court had summarized a few situations of hardship that may be faced by a Government Servant/Employee on the issue of recovery and held to be impermissible in law. Among these situations, (i) recovery from the employees belonging to Class III and Class IV (Group C and Group D) Categories, (ii) recovery from the retired employees or the employees, who are due to retire within one year and (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, etc. are some of the situations, which were held to be impermissible in law in the above said decision.

15. In **2015 4 SCC 334 (State of Punjab Vs. Rafiq Masih (White Washer) and others)**, the Honourable Supreme Court, was pleased to observe as under:-

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).



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(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

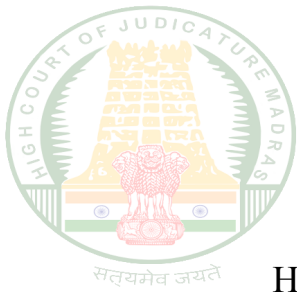
(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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.”

16. The present case is squarely covered by one of the situations summarised by the Honourable Supreme Court referred to above, namely, *recovery from retired employees, or employees who are due to retire within one year, of the order of recovery*, inasmuch as, in the present case, admittedly after the Petitioner's retirement from service on 30.04.2014, the impugned order of recovery was passed on 21.05.2021 more than five years after the retirement of the Petitioner. In view of the law laid down by the Honourable Supreme Court as stated supra, the impugned order, contemplating recovery of the excess payment, cannot be legally sustained.

17. **In 2009 3 SCC 475 (Syed Abdul Qadir Vs. State of Bihar), the**



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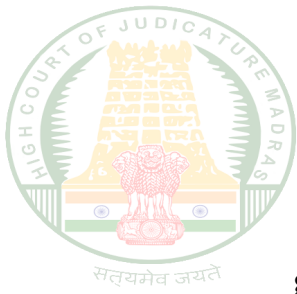
Honourable Supreme Court was pleased to observe as under:-

“59. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

18. **In 2022 1 CTC 736 (R.Jeyaprakash Vs. Executive Officer)**, the Madurai Bench of the Madras High Court was pleased to observe as under:-

“40.The ratio to be gleaned is that the facts and circumstances of every case have to be examined and appreciated on their own merit to discern whether the re-fixation and recovery in question was warranted or justified. Exceptional circumstances that call for complete justice must be taken note of while deciding the fate of the action initiated.

41.The take-away thus, is that the duty of the Court must be to balance whether the re-fixation and recovery ordered is iniquitous or unfair on the one hand or whether the corresponding right of the employer to recover the amount is



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greater on the other hand, in effect, whether the recovery has 'a harsh and arbitrary effect on the employee'. In deciding so, the Court must bear in mind that the concerned employee would normally not have any vested right in the excess amount received by him. It is upon an application of those principles that the present case must be decided.”

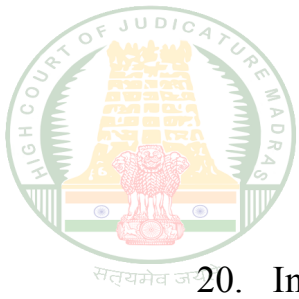
19. In the judgement and order, dated 26.07.2019 made in WP(MD)No.20358 of 2014 (C.Rajeswari Vs. The Accountant General (A&E), Chennai), the Madurai Bench of the Madras High

Court was pleased to observe as under:-

“3. This Court is of the opinion that the family pension cannot be recovered from the family pensioner, even if an excess amount has been paid by way of either mistake or wrong fixation. This apart, the monetary benefits cannot be recovered from the family pensioner, without providing any show cause notice or opportunity to the person affected.

5. The writ petitioner is a family pensioner and there was no misrepresentation or otherwise on the part of the writ petitioner, even there was no undertaking in this regard. Under these circumstances, the impugned order of recovery is untenable and the excess payment already paid to the writ petitioner cannot be recovered from the writ petitioner. This being the factum, the following orders are passed:

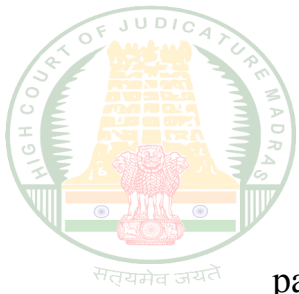
- i. The impugned order of recovery, dated 14.11.2014, passed by the second respondent, is quashed.
- ii. The respondents are directed to fix the correct scale of pay as applicable to the writ petitioner's husband and accordingly, pay the revised family pension and continue the pay to the writ petitioner with reference to the pension rules in force.”



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20. In the present case, admittedly, the alleged excess pension amount had been paid to the Petitioner inadvertently, for which, the Petitioner cannot be held responsible. The Petitioner had no knowledge that the amount that was being paid to him was more than what he was entitled to. It is also pertinent to note that unless it is established that the said excess payment was made due to misrepresentation or fraud on the part of the Petitioner, recovery of the same cannot be permitted. Admittedly, in the present case, it is not the case of the Respondents that there was misrepresentation or fraud on the part of the Petitioner for receiving the excess pension amount. The Petitioner is the only bread winner of the family. In such view of the matter, this Court is of the view that at this stage, recovery of excess payments made from the Petitioner, when he retired from service very long back, would entail harsh consequences and would be iniquitous and arbitrary. Therefore, this Court finds no reason to exercise its judicial discretion exercising judiciously so as to justify the claim of the Respondents to recover the excess pension amount paid to the Petitioner, at this long duration of period.

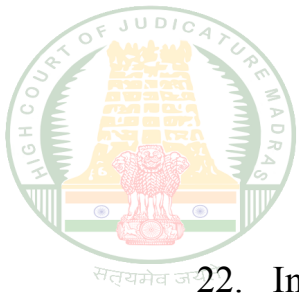
21. To sum and substance, in this case, as stated above, the Petitioner was not given a sufficient opportunity or show cause notice, before



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passing the impugned order. In view of the above said referred decisions of the Honourable Supreme Court and the Honourable Principal Bench and the Madurai Bench of the Madras High Court, the impugned order of recovery cannot be permissible in law, since the impugned order was passed after long duration of period after retirement of the Petitioner. It is not the case of the Respondents that the Petitioner has willfully suppressed or misrepresented any material fact for receiving the enhanced pension. Since it is stated by the Respondents that the excess pension amount was paid inadvertently to the Petitioner, the Petitioner cannot be made responsible for the same. The Petitioner being a retired Government Servant, he and his family are solely dependent on the pensionary benefits for day to day needs. Therefore, the act of the 3rd Respondent in initiating recovery proceedings is completely unsustainable in law and consequently, no recovery of the amount that has been paid in excess to the Petitioner, should be made. Therefore, there is no merits whatsoever in the claim of the Respondents to recover the excess pension amount paid to the Petitioner, at this belated stage and hence, the present Writ Petition is liable to be allowed and the impugned order of recovery is liable to be quashed.



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22. In the result, in the light of the observations and the discussions made above and in the light of the decisions referred to above, this Writ Petition is **allowed**, as prayed for. The impugned order of the 3rd Respondent in Na.Ka.No.137/E1/2021, dated 21.05.2021 is **hereby quashed**. The Respondents are directed to continue to pay regularly the pension at the rate at which, the Petitioner is drawing his pension, presently and also pay the arrears of pension, if any, within a period of six weeks from the date of receipt of a certified copy of this order.

23. There is no order as to costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

21.03.2025

Index:Yes.No
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Neutral Citation
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To

1. The Accountant General (A&E), Department of Treasuries and Accounts
Chennai-18
2. The District Treasury Officer, Pudukottai
3. The Assistant Treasury Officer, Sub Treasury, Keeranur, Pudukottai



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SHAMIM AHMED, J.

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Pre-Delivery Order in
WP(MD)No.10132 of 2021

21.03.2025