

WP(MD).22607 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 13.03.2025

PRONOUNCED ON : 21.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE SHAMIM AHMED

WP(MD)No.22607 of 2022
WMP(MD)Nos.16775 and 16776 of 2022

A.Pavunammal, W/o.B.Aandappan (Late)
No.7/35, Sempatti, Andakulam Post
Kulathur, Pudukottai

Petitioner(s)

Vs

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

Respondent(s)

Prayer:- This Writ Petition has been filed, under the Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the order passed by the 3rd Respondent, in proceedings in Na.Ka.No.312A, dated 22.08.2022 and to quash the same.

For Petitioner(s) : Mr.Alagia Nambi

For Respondent(s) : Mrs.S.Mahalakshmi-R1
Mr.D.Sadiq Raja, AGP and



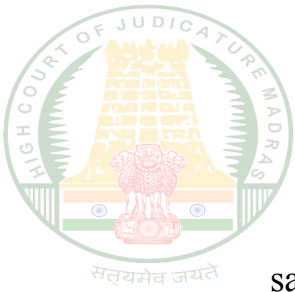
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Mr.P.Thambidurai, GA -RR2 and 3

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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 Certiorari to call for the records, relating to the order passed by the 3rd Respondent, in proceedings in Na.Ka.No.312A, dated 22.08.2022 and to quash the same.
2. The facts of case, in a nutshell, led to filing of this Writ Petition and necessary for disposal of same, are that the Petitioner's husband, B.Aandappan had joined as a Village Head Man on 17.05.1957 and after his retirement, he died on 19.11.2017. By the GO.Ms.No.828 (Rev), dated 23.08.1996, family pension was sanctioned in favour of the Petitioner from 19.12.2018 onwards. The Petitioner received the entitled pending pension amount and she also started to receive the family pension at the rate of Rs.6,750/- p.m. While so, in the year 2022, the 3rd Respondent had passed the impugned order, dated 22.08.2022, stating that since it was found, during the audit conducted by the concerned Authorities that an excess family pension amount to the tune of Rs.2,94,233/- was paid to her for the period from 20.11.2017 to 31.07.2022, the Petitioner had to repay the above



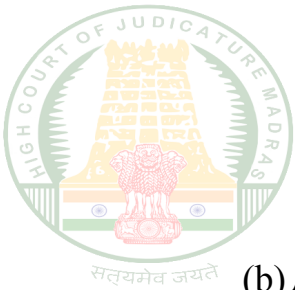
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said excess amount. From 01.08.2022 onwards, the pension amount was not credited in her pension account till date to recover the alleged excess pension amount paid to her. Hence, contending that unless the impugned order of recovery is set aside, she will be put to irreparable loss and hardship, since she 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 husband of the Petitioner, B.Aandappan had joined as a Village Head Man on 17.05.1957 and after his retirement, he died on 19.11.2017. The husband of the Petitioner was dismissed from service with special ordinance passed by the Government of Tamil Nadu, with effect from 14.11.1980. Then, as per GO.Ms.No.828, dated 23.08.1996, he was authorised to receive a special pension of Rs.175/- with effect from 05.12.1986 and at Rs.250/- from 22.07.1998, by the 1st Respondent, vide Pension Payment Order No. 52871/VOA and he was drawing pension from the Office of the 3rd Respondent.



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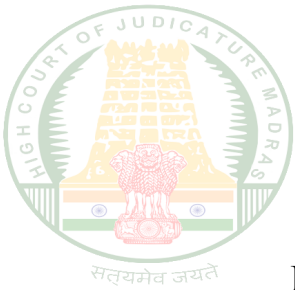
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(b) As per the GO.Ms.No.336, Finance Department, dated 17.11.2017,

the pension was revised at Rs.6750/- with effect from 01.10.2017.

Based on the application of the Petitioner, seeking family pension, she was sanctioned the family pension of Rs.6,750/- plus allowance per month as per the Rules in force with effect from 20.11.2017 by the 3rd Respondent by the Order No.49/2018/A1, dated 19.02.2018 and she was paid family pension upto July 2022 in the above mentioned rate of pension.

(c) While so, during the Audit of Keeranur Sub Treasury records by the Regional Joint Director of Treasuries and Accounts, Trichy during July 2022, it was found that though the Petitioner is a Ex.V.O's Family Pensioner, she is eligible for the pension of Rs.2,250/- plus allowances only with effect from 20.11.2017 as per G.O.Ms.No.336, Finance Department, dated 17.11.2017 and hence, excess payment of pension and allowances amounting to Rs.2,94,233/- has to be recovered from the Petitioner. During the Audit, the Petitioner had also given a consent letter, dated 22.08.2022 to recover the excess amount in monthly instalment basis at the rate of Rs.3,000/- p.m. from her monthly pension. Only on the basis of the consent letter for recovery of the excess pension amount paid to her, the 3rd



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Respondent had passed the impugned order, dated 22.08.2022 for recovery of the excess pension amount paid to the Petitioner and revised the monthly pension from Rs.6,750/- to Rs.2250/- from August 2022 onwards. Since the Petitioner's family pension is not in consonance with the GO.Ms.No.336, dated 17.11.2017, hence, the excess pension amount paid to the Petitioner has to be recovered. In such circumstances, this Writ Petition is liable to be dismissed.

4. This Court heard Mr.Alagia Nambi, the learned counsel for the Petitioner and Mrs.S.Mahalakshmi, the learned Standing Counsel for the 1st Respondent and Mr.D.Sadiq Raja, the learned Additional Government Pleader and Mr.P.Thambidurai, the learned Government Advocate for the Respondents 2 and 3.
5. For the sake of convenience, the Petitioner and her late Husband are herein after referred to as the Family Pensioner and the Government Servant or Pensioner, respectively.
6. The learned counsel for the Petitioner/Family Pensioner has submitted 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 the family pension cannot be recovered from the family pensioner, even if an excess



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amount has been paid by way of either mistake or wrong fixation. The learned counsel would further submit that recovery cannot be made from the retired employees and also when the excess payment has been made for a period in excess of five years and from the employees belonging to Class III and Class IV Service (Group C and D Categories) and that when there was no misrepresentation or fraud on the part of the Pensioner/Family Pensioner for receiving the pension more than the eligible pension amount, recovery of the same cannot be permissible in law, that too, after a long duration of period and hence, the impugned order is not sustainable and that the Respondents may be directed to pay the arrears of the family pension amount at the rate of Rs.6,750/- p.m. from 01.08.2022 till date and therefore, to continue to pay the family pension at the above said rate, by allowing this Writ Petition.

7. In support of his contentions, the learned counsel for the Petitioner/Family Pensioner has relied on the following decisions:-

- i. **2015 4 SCC 334 (State of Punjab Vs. Rafiq Masih (White Washer) and others.**
- ii. **2022 1 CTC 736 (R.Jeyaprakash Vs. Executive Officer)**
- iii. **Judgement and order, dated 26.07.2019 made in WP(MD)No.20358 of 2014 (C.Rajeswari Vs. The**



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**Accountant General (A&E), Chennai and others of the
Madurai Bench of the Madras High Court.**

8. The learned counsel for the Respondents, while reiterating the averments made in the counter affidavit filed by the 3rd Respondent, submit that since the family pension of the Petitioner is not in conformity with the GO.Ms.No.336, 17.11.2017, which entitles the Petitioner/Family Pensioner to receive the family pension only with effect from 20.11.2017 and when the Petitioner/Family Pensioner herself had given a consent letter on 22.08.2022 to recover the excess family pension amount paid to her in monthly instalments, the impugned order, directing the Petitioner to repay the excess pension amount paid to her 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/Family Pensioner, as per the impugned order.
9. 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.
10. On perusal of the records, it is seen that admittedly, the deceased husband of the Petitioner, B.Aandappan was a Government Servant

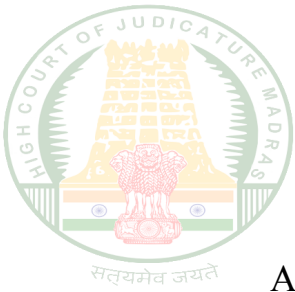


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and Pensioner. The Petitioner is the wife of B.Aandappan, who had joined as a Village Head Man on 17.05.1957 and after his retirement, he died on 19.11.2017 and thus, the Petitioner is the Family Pensioner.

11. According to the Family Pensioner, she was sanctioned family pension as per GO.Ms.No.828, dated 23.08.1996 from 19.12.2018 onwards and started to receive the pension at the rate of Rs.6,750/- p.m. The said fact is also not in dispute. However, pursuant to the impugned order, family pension is not credited to the account of the Family Pensioner from 01.08.2022. There is also a interim order of stay of recovery, passed by this Court on 27.09.2022.
12. According to the Respondents, the husband of the Petitioner/Family Pensioner was dismissed from service with special ordinance passed by the Government of Tamil Nadu with effect from 14.11.1980. As per the G.O.Ms.No.828, dated 23.08.1996, he was authorised to receive a special pension of Rs.175/- with effect from 05.12.1986 and at Rs.250/- from 22.07.1998. As per the GO.Ms.No.336, Finance Department, dated 14.11.2017, the pension was revised at Rs.6750/- with effect from 01.10.2017.
13. However, it is the contention of the Respondents that since in the

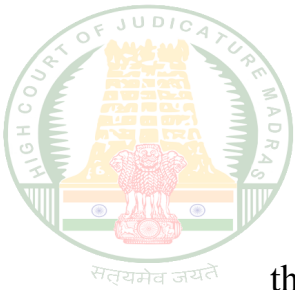


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Audit conducted in July 2022, it was found that she is eligible for the pension amount of Rs.2,250/- plus allowances only with effect from 20.11.2017 and since as per the G.O.Ms.No.336, Finance Department, dated 17.11.2017, the family pension of the Petitioner is not in order, the impugned order, dated 22.08.2022 was passed, directing the Petitioner to repay the excess payment of pension and allowances amounting to Rs.2,94,233/-. Only after receiving the consent letter from the Petitioner/Family Pensioner on 22.08.2022 for recovery of the excess amount, the impugned order had been passed.

14. 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/Family Pensioner before passing the impugned order of recovery of the excess pension amount paid to her. It is stated by the Respondents that the Petitioner/Family Pensioner had given a consent letter on 22.08.2022 to recover the excess pension amount paid to the Petitioner/Family Pensioner, but the impugned order had been passed on the same day itself, i.e. on 22.08.2022. There is no evidence to show that the Petitioner/Family Pensioner had given such a consent letter. There is also no evidence to show that the Family Pensioner was given sufficient opportunity or show cause notice before passing

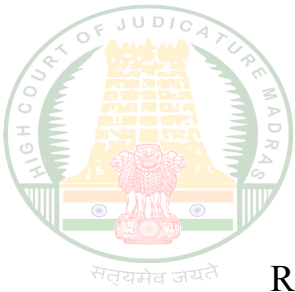


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the impugned order. Thus, it is established that the Petitioner/Family Pensioner was not given sufficient opportunity or a show cause notice at all before passing the impugned order of recovery. Hence, the impugned order is in violation of principles of natural justice. On this ground, the impugned order is vitiated.

15. Secondly, even assuming that there was sufficient opportunity or show cause notice given to the Petitioner/Family Pensioner, it is to be seen as to whether the impugned order, directing the Petitioner/Family Pensioner to repay the excess pension amount paid to her, after a long duration of time after the retirement of the Pensioner/Government Servant, that too, after his demise, is permissible in law?
16. In this case, admittedly, the Government Servant, who is the husband of the Petitioner/Family Pensioner, died on 19.11.2017 after his retirement. Even according to the Respondents, the husband of the Petitioner was dismissed from service with special ordinance passed by the Government of Tamil Nadu, with effect from 14.11.1980. As per the GO.Ms.No.828, dated 23.08.1996, the Government Servant was authorised to receive a special pension of Rs.175/- with effect from 05.12.1986 and at Rs.250/- from 22.07.1998, by the 1st

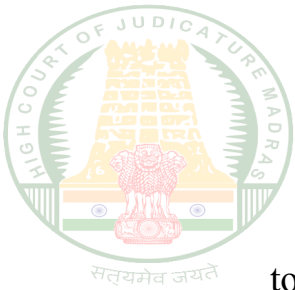


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Respondent, vide Pension Payment Order No.52871/VOA and he was drawing the pension from the Office of the 3rd Respondent. After the demise of the Government Servant on 19.11.2017, the Petitioner/Family Pensioner was sanctioned with the family pension as per the GO.Ms.No.828, dated 23.08.1996, from 19.02.2018. Even as per the averments made in the counter affidavit filed by the 2nd Respondent, the Family Pensioner was paid with the family pension upto July 2022 at the rate of Rs.6,750/- plus allowances p.m. Even prior to date of death of the husband of the Family Pensioner, on 19.11.2017, the Government Servant retired. Thus, it is clear that the impugned order had been passed on 22.08.2022 after more than five years from the date of retirement of the Government Servant, that too after the demise of the Pensioner/ Government Servant on 19.11.2017.

17. 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.

18. 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.”

19. The present case is squarely covered by the 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 the Government Servant, after his retirement from service, died on 19.11.2017 and the impugned order of recovery was passed on 22.08.2022 more than five years after the retirement and death of the Government Servant. 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.



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

Honourable Supreme Court was pleased to observe as under:-

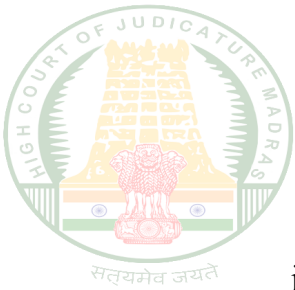
“59. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place 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.”

21. 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



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iniquitous or unfair on the one hand or whether the corresponding right of the employer to recover the amount is 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.”

22. 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



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petitioner with reference to the pension rules in force.”

23. It is also pertinent to note that unless it is established that the said excess payment was made due to misrepresentation of fraud on the part of the Government Servant or the family pensioner, 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 deceased Government Servant or the Petitioner/Family Pensioner in getting the excess pension amount. After demise of the Government Servant, the Family Pensioner was receiving the family pension and she is the only bread winner of the family. This Court is of the view that at this stage, recovery of excess payments, made from the Petitioner/Family Pensioner, when her husband had retired from service very long back and also died, would entail harsh consequences. 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/Family Pensioner, at this long duration of period.
24. 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 husband of the Petitioner/Family Pensioner. Therefore, there is no merits whatsoever in the claim of the Respondents to recover the excess pension amount paid to the Petitioner/Family Pensioner, 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.

25. 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 passed by the 3rd Respondent, in proceedings in Na.Ka.No.312A, dated 22.08.2022 **is hereby quashed**. The Respondents are directed to pay the arrears of the family pension amount, if any, at the rate of Rs. 6,750/- p.m. from 01.08.2022 till the date of payment, within a period of six weeks from the date of receipt of a certified copy of this order



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and thereafter, to continue to pay the family pension at the above said rate to the Petitioner/Family Pensioner regularly.

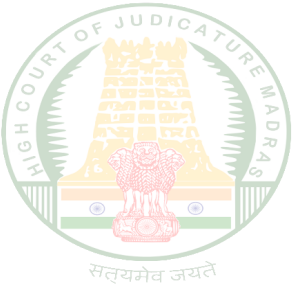
26. There is no order as to costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

21.03.2025

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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.22607 of 2022

21.03.2025