

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.02.2024

ORDERS PRONOUNCED ON : 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.Nos. 32280 of 2017 and 14243 of 2020

and

W.M.P.Nos. 35534 to 35537 of 2017 and 17718 of 2020

W.P.No.32280 of 2017

V. Radhakrishnan (Deceased)

Sundrambal

... Petitioner

[P1-Substituted vide order dated 08.08.2023
in W.M.P.No.10682/2023 in W.P.No.32280/2017]

Vs.

1.The Government of Tamil Nadu,
Rep., by Secretary,
Higher Education,
Chennai – 9.

2.The Assistant Treasury Officer,
Sub-Treasury,
Pollachi.

3.The Secretary,
NGM College,
Palakad Road, Pollachi.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining in



Na.Ka.No.831/2017/A3 dated 01.03.2017 issued by the second respondent, quash the same and direct the second respondent to continue to pay the revised family pension to the petitioner and thus render justice.

For Petitioner : Mr. R. Subramanian

For Respondents : Mrs. C. Sangamithirai,
Special Government Pleader

W.P.No.14243 of 2020

Sundarambal

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep., by Secretary,
Higher Education,
Chennai – 9.

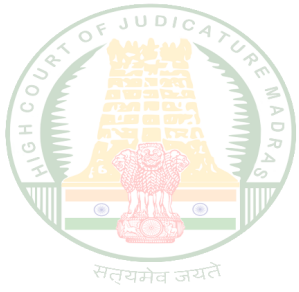
2.The Sub-Treasury Officer,
Palakad Road,
Pollachi, Coimbatore District.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the second respondent to pay family pension on the pension amount received by the petitioner's husband (PPO 758781) and thus render justice.

For Petitioner : Mr. R. Subramanian

For Respondents : Mrs. C. Sangamithirai,
Special Government Pleader



COMMON ORDER

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Heard Mr.R.Subramanian, learned counsel for the petitioner and Mrs.C.Sangamithirai, the learned Special Government Pleader appearing for the respondents.

2. The W.P.No.32280 of 2017 was originally filed by one V. Radhakrishnan. During the pendency of this writ proceedings, he died and his wife filed substitute petition bearing W.M.P.No.10682 of 2023 in W.P.No.32280 of 2017 and the same was allowed by order of this Court dated 18.08.2023.

3. The W.P.No.14243 of 2020 is filed by the wife of the said V. Radhakrishnan seeking a direction to the second respondent to pay family pension on the pension amount received by her husband (PPO 758781) in the interest of justice.

4. As the issues in both writ petitions are inter connected, both writ petitions are heard together and disposed by common order.

5. Having heard the submissions of the learned counsel appearing on either side and on careful examination of the materials available on record, the admitted facts emerged as herein under:-



i. The petitioner in W.P.No.32280 of 2017 who is the husband of the petitioner in W.P.No.14243 of 2020 i.e., V. Radhakrishnan had served as Lecturer Selection Grade and retired on 30.09.1988.

ii. His pension amount was fixed at Rs.1,046/- per month. Thereafter, the revised pension was fixed at Rs.57,241/- in the pay scale of Rs.37,400 - 67,000/- + 9000GP.

iii. He has been receiving a revised pension till February 2017.

iv. Received letter from the second respondent dated 01.03.2017 stating that an excess pension of Rs.11,54,844/- had been paid and the same is liable to be recovered.

v. The petitioner submitted a representation on 19.10.2017 stating that since he was re-designated as Lecturer Selection Grade from 01.01.1986, consequent to the changing of nomenclature of profession as Lecturer Selection Grade, the concept of completing three years from 01.01.1986 is not applicable.

vi. But the third respondent has been deducting pension from March 2017 onwards. Accordingly, he is receiving revised pension of Rs.27,252/- per month instead of revised pension of Rs.57,241/-. Against the proceedings dated 01.03.2017, issued by the second respondent, he filed W.P.No.32280 of 2017.

vii. This Court by an order dated 12.12.2017 stayed the proceedings dated



01.03.2017 of the second respondent.

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viii. Subsequently, the petitioner in W.P.No.32280 of 2017 died on 16.02.2019.

ix. The petitioner in W.P.No.14243 of 2020 filed substitute petition bearing W.M.P.No.10682 of 2023 in W.P.No.32280 of 2017 and the same was allowed by order of this Court dated 18.08.2023. She also filed W.P.No.14243 of 2020.

6. A counter affidavit has been filed on behalf of the second respondent, wherein it is stated that as per G.O.Ms.No.1785, Education (H-3) Department, as per Government Letter 2/D/No.46/Higher Edn/H1 Department dated 05.12.1988 the nomenclature of profession has been re-designated as Lecturer Selection Grade from 01.01.1986. As such, three years in the cadre of Lecturer Selection Grade has been completed on 31.12.1988. But the petitioner retired from service on 30.09.1988. He has not completed three years in the cadre of Lecturer Selection Grade.

7. It is further stated that the petitioner expired on 16.02.2019 and total recovery amount is Rs.11,54,844/- and so far recovered is Rs.3,04,020/-. Subsequently, based on the stay order of this Court, recovery has been stopped and family pension resumed to the petitioner's wife with effect from 17.02.2019. Thereafter, the family pension of the petitioner's wife has been stopped from October



2022 due to non-mustering. Total undrawn family pension of the petitioner's wife of Rs.4,69,002/- is withdrawn from the bank account and the same has been remitted to the Government Account. Thereafter, as per the direction of this Court on 21.08.2023, the petitioner's wife is mustered on the same day itself i.e., 21.08.2023 and the undrawn family pension of Rs.4,69,001/- of the petitioner's wife has been released to her account on 24.08.2023 and monthly family pension was resumed with effect from November 2023. The family pension arrears of the petitioner's wife for the period from November 2022 to August 2023 of Rs.1,80,520/- has also been settled on 27.10.2023. Finally, it is submitted that the prayer of the petitioner has already been complied with and there is no payment pending to the petitioner's wife and the family pension has been disbursed to the petitioner's wife till date. Hence, prayed to dismiss the writ petition.

8. This Court gave its anxious consideration to the submissions made by the respective counsel and carefully perused the materials available on record.

9. Admittedly, there is no dispute with respect to the appointment of the petitioner's husband as Lecturer till retirement from service on 30.09.1988. As per the revised pension scheme fixed by the respondents from time to time, the petitioner's husband has been receiving a revised pension from the date of his retirement till the date of his impugned order. It is the contention of the respondents



that an excess payment was made to the petitioner's husband to an amount of Rs.11,54,844/- and the same is liable to be recovered by the impugned order. But on careful perusal of the impugned order, wherein the respondents have contemplated to effect recovery from the pension of the petitioner, it is clearly established that no show cause notice was issued to the petitioner's husband calling for his explanation or no opportunity was provided to him to put forth his case before the respondents to demonstrate whether the allegation of the respondents is correct or not.

10. It is also an admitted fact that in fixing the revised pension to him, the petitioner's husband has no role to that effect and there is no mis-representation on his part with regard to the revision of pension. The respondents themselves have fixed the revised pension and paid the same to the petitioner's husband for all these years. As such, there is no justification in issuing the impugned order by the second respondent to recover the said amount. In fact, this writ petition was filed in the year 2017 and at that time, the petitioner was aged 87 years. At that age, the second respondent issued the impugned order for recovery and the same was challenged before this Court.

11. At the admission stage, this Court ordered interim stay of the impugned order and during the pendency of this writ proceedings, the petitioner died on 16.02.2019 at the age of 89 years and the wife of the petitioner at the age of 80 years



came on record.

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12. It is settled law that without issuing any notice to the aggrieved party, passing an order is in violation of the principles of natural justice.

13. Admittedly, in the present case, before passing the impugned order, the second respondent did not choose to issue show cause notice to the petitioner's husband calling for his explanation. As such, in our considered view, the order impugned in this writ petition is passed in violation of the principles of natural justice.

14. In fact, on several occasions, identical issue came up for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in **Rafiq Masih (White Washer)** (supra), this Court set aside the proceedings of recovery in W.P.No.6945 of 2022, dated 26.06.2023 and in W.P.(MD) No.16106 of 2016, dated 20.07.2023. The relevant portion of the judgment of the Hon'ble Apex Court in **Rafiq Masih (White Washer)** (supra), is extracted herein under:

“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



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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).

(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 employers right to recover.”

15. One of the guidelines as relevant to the present case is that no recovery to be initiated from retired employees or employees, who are due to retire within one year of the order of recovery. In the present case, the original petitioner retired on 30.09.1988. The respondents passed order for recovery of the excess payment in the



year 2017. Thus, the impugned order is unsustainable.

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16. The Hon'ble Apex Court in ***Thomas Daniel*** case (supra), while considering identical issue, held as extracted herein under:

“(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

17. This Court in W.P.(MD) No.17154 of 2016 and W.P.(MD) No.22395 of 2016, while dealing the identical issues, has set aside the orders for recovery impugned therein.

18. On consideration of the facts and circumstances of the present case and in the light of the authorities stated supra, this Court has no hesitation to hold that the action of the second respondent in issuing the impugned order for recovery from the pension of the petitioner is illegal, arbitrary, unjust and in violation of the principles



of natural justice and accordingly, the impugned order is liable to be set aside.

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19. For the above reasons, these Writ Petitions are allowed with the following directions: -

i) The order in Na.Ka.No.831/2017/A1 dated 01.03.2017 issued by the second respondent is hereby set aside.

ii) The respondents are directed to pay family pension to the petitioner in W.P.No.14243 of 2020 i.e., the wife of the petitioner in W.P.No.32280 of 2017 on the pension amount received by her husband (PPO 758781) from the date of the death of her husband.

iii) any amount recovered from the petitioner or arrears if any, shall be paid within six weeks from the date of receipt of copy of this order.

20. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

26.04.2024

Index :Yes/No

Neutral Citation :Yes/No

AT



BATTU DEVANAND, J.

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AT

To

1. The Secretary,
Government of Tamil Nadu,
Higher Education,
Chennai – 9.
2. The Assistant Treasury Officer,
Sub-Treasury, Pollachi.
3. The Secretary,
NGM College,
Palakad Road, Pollachi.
4. The Sub-Treasury Officer,
Palakad Road,
Pollachi, Coimbatore District.

Order made in

W.P.Nos. 32280 of 2017 and 14243 of 2020 and
W.M.P.Nos. 35534 to 35537 of 2017 and 17718 of 2020

26.04.2024