



W.P.(MD)No.26936 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.26936 of 2019

and

W.M.P(MD)No.23284 of 2019

I.Mahalingam

...

Petitioner

Vs.

1.The Director,
Directorate of Local Fund Audit,
Integrate Office Complex for Finance Department,
4th Floor,
Nandhanam,
Chennai – 35.

2.The Assistant Director (Additional Charge),
Municipality Pension Payment Department,
Local Fund Directorate,
Integrate Office Complex for Finance Department,
4th Floor,
Nandhanam,
Chennai – 35.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records of the 2nd respondent in his proceedings in Na.Ka.No.351/NaOVa(3)/2018, dated



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30.11.2018 and quash the same and consequently direct the respondents to pay a sum of Rs.40,380/- to the petitioner.

For Petitioner : Mr.K.Hemakarhikeyan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed to quash the impugned order, dated 30.11.2018 with consequential direction to the respondents to pay a sum of Rs.40,380/- to the petitioner.

2. Heard Mr.K.Hemakarhikeyan, learned counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents. Perused the material documents available on record.

3. The petitioner was originally appointed as Junior Assistant in the Municipality in the year 1977 and promoted to various posts. On attaining the age



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of superannuation, he retired from service on 31.12.2009 and the petitioner has also received terminal benefits and also receiving pension in the Pension Pay Order No.22132/M. While the petitioner was in service, disciplinary proceeding was initiated under Rule 8 (2) of Tamil Nadu Municipality Service (Disciplinary and Appeal) Rules, 1970. After the enquiry, the respondents have been imposed punishment, through G.O(D)No.246 Municipal Administration and Water Supply Department, dated 08.05.2013, whereby he was imposed punishment of cut in pension of Rs.500/-per month for a period of two years. The respondents have also initiated another disciplinary proceeding, which ended in punishment, vide order, dated 07.10.2015 and the punishment imposed is cut in the pension of Rs. 1000/-per month, for a period of 18 months. The contention in the writ petition is that the respondents have deducted the said amount from the basic pension of the petitioner, which is against rule. The respondents ought to have deducted from the pension payable to the petitioner and not from the basic pension payment.

4. The petitioner relied on the punishment order. As far as the first punishment is concerned, the respondents have stated to deduct from the pension payable. The relevant portion is extracted hereunder:



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“5. மேற்கண்ட சூழ்நிலையில், திரு.ஐ.மகாலிங்கம், தென்காசி நகராட்சி முன்னாள் மேலாளர் (ஓய்வு), மீது சுமத்தப்பட்ட மூன்று குற்றச்சாட்டுக்களும் நிரூபணமாகின்றன என முடிவு செய்து நிரூபணமான குற்றச்சாட்டுக்களுக்கு தண்டனையாக குற்றம் சாட்டப்பட்ட அலுவலரது ஓய்வுதியத்திலிருந்து மாதம் ரூ.500-(ரூபாய் ஐநூறு மட்டும்) வீதம் இரண்டு ஆண்டுகளுக்கு பிடித்தம் செய்ய உத்தேசித்த தண்டனையை உறுதி செய்து அரசு ஆணையிடுகிறது. □

5. As far as the second punishment is concerned, it is also stated it has to be deducted from the pension payable and the relevant portion is extracted hereunder:

...

“The Disciplinary Authority have examined the case carefully with relevant records and have decided to accept the findings of the Inquiry Officer and hold the charges framed against the delinquent officer as proved. Hence, for the proven charges he is hereby awarded a punishment of cut in pension at Rs.1,000/-per month for a period of 18 months.”

6. Strangely, in the impugned order, it is interpreted as if the Dearness allowance and other payment shall not be added and it has to be deducted from the basic pension. The relevant portion is extracted hereunder:



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“மிகையாக பிடித்தம் செய்யப்பட்ட ஓய்வூதிய தொகைக்கு அகவிலைப்படியும் நிலுவையுடன் சேர்த்து வழங்கப்பட்டுள்ளது. மேலும், ஆணைகளின்படி ரூ.1000-மற்றும் ரூ.500-ஓய்வூதியத்தில் பிடித்தம் ஆணையிடப்பட்டுள்ளது. எனவே, மே 2016 முதல் ஓய்வூதியத்தில் பிடித்தம் செய்த தொகைக்கு அகவிலைப்படி அளிக்க இயலாது என்பது தெரிவித்துக்கொள்ளப்படுகிறது.”

7. On perusal of the punishment orders, this Court is of the considered opinion that there is no specific direction that it has to be deducted from the “**basic pension**” and it is only stated that it has to be deducted from the “**pension**”. Hence, this Court is of the considered opinion that it has to be deducted from the pension payable and not from the basic pension payment.

8. In the counter it has been stated that a clarification is issued by the Government in Letter No.113767/Pension/92-6 of Finance (Pension) Department dated 07.10.1992 it is stated that “the Dearness allowance and pension should also be based on pension that is actually admissible before commutation”. On perusal of the aforesaid clarification, it will be evident that even according to the



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respondents, add the Dearness allowance in the pension, thereafter only, commutation would be granted. The same principle is applicable for the deduction in pension also. Therefore, the claim of the respondents is erroneous.

9. The issue can be analyzed in another angle. The 1st punishment states to deduct Rs.500/- for 24 months which comes to Rs.12,000/-. The 2nd punishment is Rs.1000/- for 18 months which comes to Rs.18,000/-. The total recovery payment is Rs.30,000/-. If the petitioner is willing to pay the entire amount in one stroke, then the petitioner would have to pay a sum of Rs.30,000/-. But through the impugned order, the respondents have deducted a sum of Rs. 70,380/-. The punishment is only to recover Rs.30,000/- and not Rs.70,380/-. Therefore, is Court is not accepting the said contention of the respondent.

10. Accordingly, the impugned recovery order, dated 30.11.2018 is hereby quashed. The petitioner has paid the entire amount. The respondents are directed to repay the remaining amount of Rs.40,380/-. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of the order.



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II. With these observations and directions, this Writ Petition is allowed.

No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

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To

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Directorate of Local Fund Audit,
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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 26936 of 2019**

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