

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.36295 of 2003

P.Indrani

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chennai-5.

2. The Secretary,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chennai-5.

3. The Administrative Officer-I,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chennai-5.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order of the 1st respondent in Lr.No.75739/EA1/2001 dated 5.8.2002 and the consequential order of the 2nd respondent in Proc.No.044987/ENT.II/A3/2003 dated 18.6.2003.

For Petitioner : Mr.D.Kanagasundaram

For Respondents : Mr.M.Arokiaraj

O R D E R

Challenging the recovery proceedings of the 1st respondent dated 5.8.2002 and also the consequential order of the 2nd respondent dated 18.6.2003, the present Writ Petition has been filed.

2. The case of the petitioner is that the petitioner was appointed as a Junior Assistant on 14.08.1981 in the respondent Board and her services were regularised on the same year. Subsequent to the passing of the Accounts Test conducted by the Department, the petitioner was awarded one advance increment w.e.f. 2.12.1986. While so, during the years 1998 and 2002, the petitioner has given relinquishment for promotion as Assistant for personal reasons. Thereafter, the petitioner retired from service on 30.07.2002 voluntarily from the TWAD Board. After her retirement, on 5.8.2002, the 1st respondent recommended the 2nd respondent for the recovery of one advance increment awarded and paid to the petitioner for her passing of the Accounts Test since she has relinquished her promotion. Based on the same, the 2nd respondent passed the impugned order of recovery dated 18.06.2003. Hence the present Writ Petition.

3. Learned Counsel for the petitioner would submit that one advance increment was awarded to the petitioner for the passing of the Accounts Test conducted by the Department in the year 1986 which has got nothing to do with the relinquishment given by the petitioner for promotion as Assistant in the years 1998 and 2002. The learned Counsel would further submit that the issue in question is covered by a decision of the Hon'ble Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) etc. reported in (2015) 4 Supreme Court Cases 334. Hence, he prays for allowing the present Writ Petition.

4. Heard the learned Counsel appearing for the respondents.

5. I have considered the submissions made on either side and I have also gone through the typed set of papers filed by the petitioner including the decision of the Hon'ble Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) etc. reported in (2015) 4 Supreme Court Cases 334.

6. In similar circumstances, in the case reported in (2015) 4 Supreme Court Cases 334, the Hon'ble Supreme Court of India formulated guidelines and enumerated circumstances under which order of recovery can be interfered and the Supreme Court also summarised few situations, wherein recoveries by the employers, would be impermissible in law, such as, (i) Recovery from employees belonging to Class-III & IV Service (or Group 'C' & 'D' Service), (ii) Recovery from retired Employees, or Employees who are due to retire within one year of the order of recovery and (iii) Recovery from employees, when the excess payment has been made for a period of 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 and (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. Applying the above said principles laid down by the Hon'ble Supreme Court of India in the case on hand, this Court is of the view that the order dated 05.08.2002 of the 1st respondent and the order dated 18.6.2003 of the 2nd respondent are liable to be set aside.

7. In the result, the Writ Petition is allowed and order dated 05.08.2002 of the 1st respondent and the order dated 18.6.2003 of the 2nd respondent are set aside. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
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Drainage Board,
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Chennai-5.
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Drainage Board,
No.31, Kamarajar Salai,
Chennai-5.

+1cc to Mr.Arokiaraj, Advocate, S.R.No.66258

+1cc to Mr.D.Kanagasundaram, Advocate, S.R.No.66180

W.P.No.36295 of 2003

MG(CO)

CA(12/10/2017)