

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8992 of 2018

G.Sumathi

..Petitioner

vs

1.The Commissioner,
Erode City Municipal Corporation,
Erode - 638 001.

2.Deputy Director of Local Fund Audit,
O/o.Erode City Municipal Corporation,
Erode - 638 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.C1/1138/2017 dated 15.06.2017 on the file of the 1st respondent and quash the same as illegal and direct the 1st respondent to reimburse Rs.1,67,938 illegally recovered from the pension benefits with interest at the rate of 18% from the dated of the impugned proceedings till the date of payment of entire gratuity amount and consequently direct the 1st respondent to sanction the monthly pension amount to the petitioner based on the Scale of Pay at Rs.5200-20200+2400 of (Late) Gopalakrishnan.

For Petitioner : Mr.P.Rajavel

For Respondents : Mr.M.Rajamathivanan for R1 & R2

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O R D E R

The order of recovery dated 15.06.2017, to recover the excess payment made in favour of the husband of the writ petitioner to the tune of Rs.1,67,938/-(Rupees One Lakh, Sixty Seven Thousand, Nine Hundred and Thirty Eight only) is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the petitioner is the wife of Late Mr.Gopalakrishnan, who was employed as Street Light Electrician in Erode City Municipal Corporation. The petitioner filed the writ petition on the ground that the impugned order of recovery has been passed on the ground that an excess payment was made to her husband, while he was in service. Unfortunately, the employee/the husband of the writ petitioner passed away on 22.05.2017 prior to the issuance of the impugned order.

3.On a perusal of the order impugned, it is stated that the scale of pay of Rs.5200-20200+2400 Grade Pay was fixed in accordance with the Government order issued in G.O.Ms.No.338, Finance(Pay Cell) Department dated 26.08.2010. However, based on the audit objections for the year 2014-15, it was found that an excess payment was made to the husband of the writ petitioner on account of wrong fixation. Thus, the recovery is imposed. Even in the impugned order, it is stated that the husband of the writ petitioner passed away on 22.05.2017 and therefore, the excess payment will be recovered from the terminal and pensionary benefits to be paid to the writ petitioner.

4.This Court is of an opinion that it is highly improper on the part of the respondents in imposing recovery in respect of an employee, who was serving as Group IV employee and passed away. Even, if an excess payment was made, the same cannot be recovered after a lapse of many years. Further, such excess payment cannot be recovered from the employees working in the cadre of Group IV as per the judgment of the Hon'ble Supreme Court of India in the case of State Of Punjab & Ors vs Rafiq Masih [2015 (4) SCC 334]. The Hon'ble Supreme Court laid down the legal principles in the matter of recovery in paragraph No.18 of the Judgement, which is extracted hereunder:

"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 excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(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.

(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.

5.The Hon'ble Supreme Court of India laid down the legal principles in the matter of recovery by stating that the recovery cannot be imposed in respect of the employees, who are working in the cadre of Group IV, even if an excess payment was made. This apart, in the present case on hand, the employee concerned passed away and now, the impugned order states that the recovery should be imposed from the terminal and pensionary benefits to be paid to the writ petitioner. Such an action of the respondents are impermissible in view of the legal principles settled in the judgment cited supra. It is also made clear that the pay as applicable to the husband of the writ petitioner can be corrected and the benefits can be settled in accordance with the Government orders and the pay rules in force. There is no impediment for the respondents to correct the scale of pay as applicable to the cadre of the deceased employee and accordingly, correct the same.

6.Thus, the impugned order passed by the first respondent in proceedings in Na.Ka.No.C1/1138/2017 dated 15.06.2017 is quashed and the respondents are directed to settle all the terminal and pensionary benefits as applicable to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order.

7.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Erode City Municipal Corporation,
Erode - 638 001.

2.Deputy Director of Local Fund Audit,
O/o.Erode City Municipal Corporation,
Erode - 638 001.

+1cc to Mr.P.Rajavel, Advocate, S.R.No.54814

+1cc to Mr.Rajamathivanan, Advocate, S.R.No.54815

W.P.No.8992 of 2018

PA(CO)
GSP(30/08/2018)



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