



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD)No.20594 of 2015

and

M.P.(MD)No.1 of 2015

M.Bharathamani

... Petitioner

-Vs-

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Development,
Secretariat, Chennai-600 009.
2. The District Collector,
Dindigul District,
Dindigul.
3. The Panchayat Union Commissioner,
Thopampatti Panchayat Union,
Thopampatti, Palani Taluk,
Dindigul District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent i.e., the Secretary to Government, Rural Development and Panchayat Raj Department relating to G.O. (2g) vz;. 101 Rural Development and Panchayat Raj Department dated 04.10.2012 and quash portion alone relating to restricting the monetary benefit and direction to the respondents to grant monetary benefit also from the date of joining i.e., from 01.05.1982 till the date of retirement without any deduction within a specified time frame that may be fixed by this Court.

For Petitioner

: Mr.S.Visvalingam

For Respondents

: Mr.M.Jeyakumar

Additional Government Pleader

ORDER

The Government Order in G.O.No.101, Rural Development and Panchayat and Panchayat Raj Department dated 04.10.2012 is under challenge in the present writ petition. The recovery order, dated 08.07.2011 is not challenged by the writ petitioner. However,



considering the age of the writ petitioner and considering the fact that he was working as Group IV employee and retired from service, this Court is inclined to mold the relief.

2. The writ petitioner is a Srilankan Repatriate and appointed as Maternity Ayah in the Maternity Hospital, Appanoothu Village, Palani Taluk. The petitioner joined duty on 01.05.1982 and allowed to retire from service on 03.06.2013. The petitioner served for about 31 years. The case of the petitioner was kept pending for want of necessary orders from the Government. The Government after a lapse of so many years passed G.O.Ms.2PC-101 dated 04.10.2012 stating that the relief relating to age was regularized in favour of the writ petitioner and accordingly, her services were regularized without arrears of pay and allowances.

3. The Government Order states that the writ petitioner is not entitled for arrears of pay and allowances. However it does not state that if any amount was paid, the same should be recovered from the writ petitioner. The Government Order has not granted any arrears of pay and allowances. Based on the said Government Order, the third respondent Panchayat Union Commissioner issued an order of recovery in proceedings dated 08.07.2014 stating that the annual increment granted to the writ petitioner was erroneous.

4. This Court is of the opinion that the very idea of the Government Order is not to grant arrears of pay and allowances to the writ petitioner and the Government has not passed any order directing the authorities to impose recovery of any increment or other allowances already paid to the employee.

5. In the present case on hand, increment was granted to the writ petitioner long back and recovery order was issued on the ground that the Government Order states that the benefit was granted without any arrears and therefore, the amount paid has to be recovered.

6. Any order affecting monetary benefits and service conditions of an employee must be issued only after providing an opportunity. In the present case on hand, no opportunity was provided to the writ petitioner. This apart, the impugned order of recovery was issued after the retirement of the writ petitioner on 03.06.2013. Even incase the salary was paid erroneously, the paid salary cannot be recovered after the retirement of an employee. The legal principles in this regard are settled by the Hon'ble Supreme Court of India in the case of **State of Punjab and others Vs. Rafiq Masih [2015 4 SCC**



7. In view of the principles laid down, the writ petitioner, who was working as Maternity Ayah, cannot be directed to repay the salary, which was already disbursed in favour of the writ petitioner. This apart there was no misrepresentation or otherwise on the part of the writ petitioner. The respondent establishment granted annual increment periodically and such payment already made cannot be recovered. However, the errors, if any, occurred in respect of the fixation of pay can be corrected in accordance with the pay rules and Government Orders in force. The excess salary already paid cannot be recovered.

8. In this view of the matter, the order of recovery passed by the third respondent in proceedings No.1426/14/a2, dated 08.07.2014 is quashed and the writ petition is allowed. If any amount is already recovered, the same is directed to be reimbursed to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order. In respect of fixation of pay, the same is to be done by the competent authorities with reference to the pay rules and Government Orders in force and accordingly the competent authorities are directed to pay the revised pension and other benefits to the writ petitioner without causing any undue delay. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
Rural Development and Panchayat Raj Development,
Secretariat, Chennai-600 009.
2. The District Collector,
Dindigul District, Dindigul.
3. The Panchayat Union Commissioner,
Thopampatti Panchayat Union,
Thopampatti, Palani Taluk,
Dindigul District.

+1cc to M/S S.VISVALINGAM, Advocate, Sr.No.68220

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No.68454