



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4788 of 2010

1. V.D.Vetri Azhagan (Deceased)
 2. V.Usha Rani
 3. V.Sangeethapriya
 4. V.Krishnakumar
 5. V.Kavipriya
 6. V.Dineshkumar
- (Petitioners 2 to 6 are substituted as
L.R's of deceased first petitioner
by order of Court dated 5.11.2019
made in W.M.P.No.31146 of 2019
in W.P.No.4788 of 2010)

.. Petitioners

-vs-

1. The Executive Officer
Gandhi Nagar Selection Grade
Town Panchayat
Gandhi Nagar East
Vellore 632 006
2. The Executive Officer
Mel Visharam Town Panchayat
Mel Visharam
Vellore District
3. The Executive Engineer
Tamil Nadu Water Supply
and Drainage Board
Urban Division
Gandhi Nagar
Vellore 632 006
4. The Director of Local Fund Audit
4th Floor, Kuralagam
Chennai 600 108
5. The Secretary to Government
Municipal Administration and
Water Supply Department
Government of Tamil Nadu
Chennai 600 009

.. Respondents



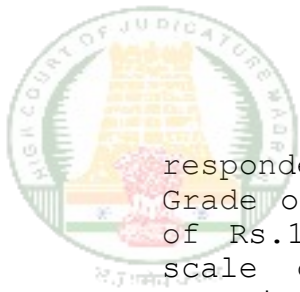
Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the letter Na.Ka.384/2008/Tha.A dated 18.12.2009 passed by the first respondent and quash the same and further direct the first respondent to refund the amount of Rs.1,68,378/- illegally recovered from the first petitioner's Death cum Retirement Gratuity and to revise his pension and other terminal benefits accordingly duly permitting to draw arrears of pension and other terminal benefits from 1.8.2006 onwards.

For Petitioners:: Mr.G.P.Arivuchudar

For Respondents:: Ms.P.Shanthi
Standing Counsel for R1
Mrs.K.Bhuvaneswari
Standing Counsel for R2
Ms.Thangavadhana Balakrishnan
Additional Government Pleader
for R4 & 5
No appearance for R3

ORDER

Mr.V.D.Vetri Azhagan, who was appointed as Fitter in the Tamil Nadu Water Supply and Drainage Board, Urban Division, Vellore and joined duty on 13.3.74, was fixed a pay of Rs.160/- in the scale of pay of Rs.160-5-240 for the said post, as per the Tamil Nadu Revised Scales of Pay Rules. Thereafter, his services were transferred along with the Melvisharam Water Supply Scheme with effect from 1.10.74 to the administrative control of the Executive Officer, Mel Visharam Town Panchayat, Vellore, the second respondent herein for further operation and maintenance of the water supply scheme. Later on, the Executive Officer, Mel Visharam Town Panchayat, Vellore, the second respondent herein and the Executive Engineer, Tamil Nadu Water Supply and Drainage Board, Urban Division, Gandhi Nagar, Vellore, the third respondent herein also sanctioned the annual increments to the first petitioner every year from the date of appointment till the date of his retirement, namely, from 13.3.74 to 31.7.2006 in the post of Fitter. The learned counsel appearing for the petitioners submitted that when the second respondent fixed the first petitioner's pay at Rs.160/- in the scale of pay of Rs.160-5-240 on 9.3.74, Rs.310/- in the scale of pay of Rs.295-5-315-10-475 on 1.4.78, Rs.670/- plus 5% Personal Pay in the scale of pay of Rs.610-20-730-25-955-30-1075 on 1.10.84 and Rs.1260/- in the scale of pay of Rs.1200-30-1560-40-2040 on 1.6.88, he was transferred and posted in the office of the first respondent herein from 25.5.94, where the first



respondent permitted the first petitioner to move to the Special Grade of Pay and fixed his pay at Rs.1500/- in the scale of pay of Rs.1320-30-1560-40-2040 on 1.10.94 and at Rs.4900/- in the scale of pay of Rs.4300-100-6000 on 1.1.96. It is also contained that from the date of the first petitioner's appointment from 13.3.74 till 31.3.2005, various local fund audit parties conducted annual internal audit at the offices of the first and second respondents and after verifying the service records, they also accepted all the service entries including the fixation of pay, revision of pay and annual increments etc., sanctioned to the first petitioner and at no point of time, the statutory audit parties had pointed out any remarks about the wrong fixation of pay and the sanction of annual increments. While so, during the audit conducted in the year 2005, the local fund audit party had pointed out some illegal and imaginary audit remarks. But the same were not communicated to the first petitioner to offer his reply. Without giving any reasonable opportunity to the first petitioner, the Executive Officer, Gandhi Nagar Selection Grade Town Panchayat, Vellore, the first respondent herein issued an order to recover a sum of Rs.59,078/- at the rate of Rs.500/- per month from the pay of the first petitioner for the month of July, 2005 towards excess payment of pay and allowances and 5% personal pay vide the proceedings dated 15.7.2005 and they have also recovered a sum of Rs.6500/- out of Rs.59,078/- from the first petitioner's salary from July, 2005 to July, 2006. Thereafter, the first petitioner was permitted to retire from service on reaching the age of superannuation on 31.7.2006.

2. In the meanwhile, the first respondent also submitted a proposal for sanction of pension, D.C.R.G.etc., to the fourth respondent, whereas the Director of Local Fund Audit, Chennai issued some irrelevant and imaginary audit remarks on the first petitioner's service book, vide letter dated 16.5.2006, based on which the first respondent also issued the order dated 5.10.2006 revising and re-fixing his pay at Rs.150/- in the scale of pay of Rs.150-4-170-5-225 from the date of his initial appointment on 13.3.74.

3. With this background facts, the learned counsel appearing for the petitioners submitted that the first respondent cannot re-fix the first petitioner's initial pay after a lapse of 32 years from the date of his initial appointment in the Tamil Nadu Water Supply and Drainage Board and they also cannot revise the annual increments from 13.3.74 to 31.7.2006, as per the Annexure-II enclosed at page 75 of the typedset. The learned counsel for the petitioners also stated that when the first petitioner was appointed as Fitter Grade-I through the Vellore District Employment Exchange and joined duty on 13.3.74 with fixation of pay of Rs.160/- in the scale of pay of Rs.160-5-240, as per the Tamil Nadu Revised Scales of Pay



Rules issued by the third respondent on 9.3.74, after a lapse of 32 long years from the date of his initial appointment, the respondents cannot re-fix his pay, more so, without giving any notice calling upon the first petitioner to submit his explanation. It is also stated that till date, although they have recovered a sum of Rs.1,68,378/- , realizing the mistake, they have only refunded a sum of Rs.1,05,720/- and the balance amount of Rs.62,658/- is yet to be refunded. Taking support from the judgment of the Supreme Court in State of Punjab and others etc., v. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334 laying down the ratio that no recovery can be effected from the employees who are falling in Group 'C' and Group 'D' service, that no recovery can be effected from retired employees or employees who are due to retire within one year of the order of recovery, the learned counsel sought for quashing the impugned order with a direction to the respondents to pay back the balance amount of Rs.62,658/- to the second petitioner, who is the wife of the deceased first petitioner.

4. The learned standing counsel appearing for the first respondent submitted that the Gandhi Nagar Selection Grade Town Panchayat, Vellore had been merged with the Vellore Corporation. The learned standing counsel appearing for the second respondent submitted that the Mel Visharam Town Panchayat still continues to be a Town Panchayat without any merger. But no counter affidavits have been filed by the first and second respondents till date.

5. The counter affidavit filed by the third respondent shows that the Local Fund Audit party had conducted inspection and objected that the first petitioner was not eligible for fixation of pay in Selection Grade for Fitter-II post and also for the 5% personal pay attached to the post from 1.8.92, therefore, recovery action was initiated by the Executive Officer, Gandhi Nagar Town Panchayat vide proceedings No.64/2006/EA dated 5.10.2006 for Rs.1,68,378/- from 1.10.74 to 31.7.2006 and the said amount was also deducted from the D.C.R.G., amount of the individual on settlement. This apart, the Director, Local Fund Audit, Chennai also intimated the Executive Officer of Gandhi Nagar Town Panchayat to recover the excess special pay allowance paid to the first petitioner from 1.8.92 to 31.7.2006 and the revised proceedings were again issued by the Executive Officer, Gandhi Nagar Town Panchayat bearing No.384/2008/A1 dated 20.10.2011 for Rs.62,658/- and the excess amount recovered from the individual was refunded to him at Rs.1,05,720/- by the Executive Officer of the said Panchayat. It is also stated that the first petitioner was absorbed in the Town Panchayat as Grade II Fitter permanently from 1.10.74 onwards and that the first petitioner had no nexus with the Tamil Nadu Water Supply and Drainage Board, as the TWAD Board is



a separate entity governed by the Tamil Nadu Water Supply and Drainage Board Act, 1970 and the Tamil Nadu Water Supply and Drainage Board Service Regulations, 1972. Inasmuch as the first petitioner's ouster took place on 1.10.74 onwards, neither he continued to be in the service of the Board nor obtained any benefit from the TWAD Board. Therefore, the claim of the petitioners for refund of a sum of Rs.62,658/- that has already been recovered, is not acceptable.

6. This Court finds it difficult to accept the stand taken by the respondents, in view of the march of law and/or the ratio laid down by the Supreme Court in State of Punjab and others etc., v. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, wherein the Supreme Court has delineated the situations, wherein recoveries by the employers, would be impermissible in law, in paragraph-12, as follows:-

"12. 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 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 employer's right to recover."



7. In the light of the above judgment, in the case on hand, admittedly the first petitioner was appointed as Fitter in the Tamil Nadu Water Supply and Drainage Board, Urban Division, Vellore through the Vellore District Employment Exchange and he joined duty on 13.3.74 with the fixation of pay of Rs.160/- in the scale of pay of Rs.160-5-240 for the said post, as per the Tamil Nadu Revised Scales of Pay Rules, and his services were transferred along with the Melvisharam Water Supply Scheme with effect from 1.10.74 to the control of the second respondent. Thereafter, the second and third respondents also sanctioned the annual increments to the first petitioner every year from the date of his appointment till the day of his retirement, namely, 13.3.74 to 31.7.2006 in the post of Fitter. Therefore, the respondents cannot re-fix his initial pay after a lapse of 32 long years. Secondly, there was no notice issued and no such notice has been enclosed by the respondents along with the counter affidavits to show that reasonable opportunity was given to the first petitioner. Thirdly, when the petitioners were able to satisfy the Court that after 32 long years from the date of entry into service, the scale of pay of the first petitioner has been wrongly re-fixed without notice and more so, without giving any opportunity whatsoever to the first petitioner, therefore, the ratio laid down by the Supreme Court in White Washer's case (cited supra) clearly and squarely applies to the case of the petitioners, as the Supreme Court has delineated the fact situations in paragraph-12(i) and (ii) that recovery from employees belonging to Group 'C' and Group 'D' service as well as the recovery from retired employees or employees who are due to retire within one year of the order of recovery, would be impermissible in law. Even the fifth situation held by the Supreme Court shows that 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, such recovery order can be set aside.

8. Since the case of the first petitioner falls within the aforementioned situations delineated by the Supreme Court, the impugned order is set aside and the writ petition stands allowed with a direction to the Executive Officer, Mel Visharam Town Panchayat, the second respondent herein to refund the balance amount of Rs.62,658/- to the second petitioner, since the first petitioner died on 23.5.2015 and they had already refunded a sum of Rs.1,05,720/- out of Rs.1,68,378/- to the first petitioner. Needless to mention that as the refixation of pay made after 32 long years is held impermissible in law, the second petitioner is entitled to get the pension on the basis of the last drawn pay received by the first petitioner on the date of his retirement on 31.7.2006 and the arrears thereon along with



Rs.62,658/- shall be paid within a period of four weeks from the date of receipt of a copy of this order. No costs.

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//True Copy//

Sd/-

Assistant Registrar (CCC)

Sub Assistant Registrar

SS

To

1. The Executive Officer
Gandhi Nagar Selection Grade
Town Panchayat
Gandhi Nagar East
Vellore 632 006
2. The Executive Officer
Mel Visharam Town Panchayat
Mel Visharam
Vellore District
3. The Executive Engineer
Tamil Nadu Water Supply
and Drainage Board
Urban Division
Gandhi Nagar
Vellore 632 006
4. The Director of Local Fund Audit
4th Floor, Kuralagam
Chennai 600 108
5. The Secretary to Government
Municipal Administration and
Water Supply Department
Fort St.George
Chennai 600 009

+1cc to Mr.Law Square, Advocate, S.R.No. 23972
+1cc to Mr.S.Thamizharasi, Advocate, S.R.No. 23066
+1cc to Ms.P.Shanthi, Advocate, S.R.No. 23579
+1cc to the Government Pleader, S.R.No. 23701

W.P.No.4788 of 2010

SR(CO)
GN(15/07/2020)