BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.03.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.9278 of 2010

and

M.P(MD)No.1 of 2010

S.Aman Beevi ..Petitioner

Vs

The Madurai Corporation,
represented by the Commissioner,
Aringar Anna Maligai,
Madurai - 625 020. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the impugned orders in Na.Ka.No.B.29/10609/2010, dated 12.5.2010, 14.5.2010 and 24.5.2010 issued by the respondent and quash the same as arbitrary and illegal and consequently to direct the respondent to refund the recovered amount of Rs.7,034/-(Rupees Seven Thousand and Thirty Four only) to the Petitioner.

For Petitioner :Mr.Y.Krishnan
For Respondent :Mr.R.Murali

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned orders in Na.Ka.No.B.29/10609/2010, dated 12.5.2010, 14.5.2010 and 24.5.2010 issued by the respondent as arbitrary and illegal and consequently to direct the respondent to refund the recovered amount of Rs.7,034/-(Rupees Seven Thousand and Thirty Four only) to the Petitioner.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Petitioner is the wife of Late Shri Subedar, who joined as Office Assistant in the respondent/corporation on 25.3.1970 and thereafter promoted as Sanitary Supervisor, died in harness on 23.11.1995 leaving behind his wife, two daughters and one son, as his legal heirs. After the demise of her husband, she is receiving family pension and with the said family pension she brought up the children and there is no other source of income except the said family pension and no legal heir of her husband is given appointment on compassionate grounds and with the mere pension, she is living with great difficulties. While-so, she was served with impugned orders dated 12.5.2010, 14.45.2010 and 24.5.2010 in Na.ka.No.B29/10609/2010 stating that Rs.56,0133/- has been excessively paid as family pension for the period from 24.11.2002 to 28.2.2010 and the said amount directed to be paid within three days.

4.The Writ Petition was filed and there was an interim order of stay issued by this Court on 20.7.2010.

5.A detailed counter was filed by the respondent denying the averments and it could be seen from the counter that the amount ought to have been calculated at 50% of the last drawn salary as per the Pension Rules and will be paid upto 7 years from the date of death of the employee and thereafter the family pension would be reduced to 30% of the basic pay. After a period of seven years also, inadvertently, the said pension was refixed at Rs.627 with effect from 24.11.1995 to 23.11.2002 for seven years and thereafter, the monthly pension was fixed at Rs.376/- from 24.11.2002. They also justified that the excessively received amount by the Petitioner being the public money has to be recovered from her. The respondent has also stated that the Petitioner has received money excessively and it has been paid inadvertently and that the Petitioner cannot claim illiteracy and non awareness and ignorance of law as an excuse. The Petitioner has an appellate remedy by filing a statutory appeal before the appellate authority and the authorities may deduct the excessive amount paid in easy installments which will not hamper the Petitioner's enquiry and prayed for dismissing the Writ Petition.

6.The learned counsel for the Respondent/Corporation also relied on a judgement of this Court made in ***W.A.(MD)No.1154 of 2018, dated 25.09.2018 in the case of The Commissioner, Madurai Corporation, Madurai /vs/M.H.Sekar*** wherein, the said appeal was filed by the husband who is a practicing lawyer and on the death of his wife who is a doctor, regarding payment of compensation, similar order was issued for recovery of the sum paid in excess. The Court has come to the conclusion that the Petitioner being a qualified Doctor and the decision of the Division Bench in ***State of Punjab . vs. Rafiq Masih reported in (2015) 4 SCC 334*** held that:

> *''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, this Court summarizes the following few situations, wherein recoveries by the employers, would be impermissible in law:*

> *(i)recovery is sustainable like recovery from employees belonging to Class-III and Class IV service*

(Group C and 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 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) If 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 out-weight the equitable balance of the employer's right to recover.''

The above decision further held that the guidelines issued in respect of Group C and Group D employees, certainly not against the well qualified Doctor and lawyer and the reason is that an employee at the bottom level finds it difficult to face the financial situation.

7.It is held that recovery has already been made substantially. Further recovery is sought to be made in a piece-meal manner by deducting a small portion of the pension payable every month. Above all recoveries are being made against the similarly placed employees. From the above we are of the view that no discretion can be exercised in favour of the respondent. There is no doubt either on fact or on law, the Petitioner is paid the excess amount. The Public money paid wrongly at the instance of an official and as such recovery sought to be made by way of deduction. Further the pension is being paid at only 30% and the We are not in a position to concur with the view expressed by the learned single Judge and allowed the Writ Appeal.

8.But in the instant case on hand, the scenario is entirely different as the Petitioner being the wife of the deceased employee, who is a Sanitary Supervisor who died in the year 1995 and the claim was made only in the year 2010 and here pension has been refixed and the reduced amount was paid, by which she is taking care of her children and as such this Court is of the view that the impugned orders passed by the respondents has to be set aside.

9.In the result, this Writ Petition is allowed and the orders impugned herein are set aside and the respondent has already recovered a sum of Rs.7,034/- that need not be refunded and there can be no further recovery from the Pension of the Petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

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Sub Assistant Registrar(CS)

vsn

To
The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai - 625 020.

+1 CC to M/s.Y.KRISHNAN, Advocate (SR-9479[F] dated 02/03/2020)
+1 CC to M/s.R.MURALI, Advocate (SR-9570[F] dated 02/03/2020)

ORDER MADE IN
W.P(MD)No.9278 of 2010 and
M.P(MD)No.1 of 2010
02.03.2020

SMA/20/03/2020/4P/4C