



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.10.2020
CORAM

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**,
W.P. (MD) No.5115 of 2018

and
W.M.P (MD) No.5087 & 5088 of 2018

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D.Thangamani

... Petitioner

Vs.

1.The Commissioner
Corporation of Madurai,
Madurai - 625 002.

2.The Deputy Director
Local Body Audit Department,
Corporation of Madurai,
Madurai - 625 002.

3.The Assistant Commissioner (Accounts)
Accounts Department
Corporation of Madurai,
Madurai - 625 002.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second Respondent vide office proceedings in Ni.Mu.No.714/A3/2016, dated 18.05.2016 and the consequential recovery impugned order passed by the third respondent vide office proceedings in Na.Ka.No.W1/mani.2/011039/2014 dated 02.06.2016 and quash the same as illegal and consequently direct the respondents to settle all the terminal benefits including pension and all other attendant benefits by providing Personal Pay 5%, Basic Pay a Sum of Rs.975-1500 and counting half of service from contingencies service along with regular service for pension benefits, within a stipulated time that may be fixed by this Court.

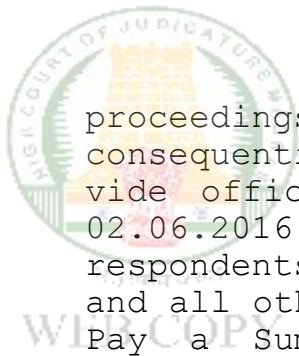
For Petitioner : Mr.R.Karunanidhi

For Respondents 1 & 3 : Mr.T.S.Mohammed Mohideen

For 2nd Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second Respondent vide office



proceedings in Ni.Mu.No.714/A3/2016, dated 18.05.2016 and the consequential recovery impugned order passed by the third respondent vide office proceedings in Na.Ka.No.W1/mani.2/ 011039/2014, dated 02.06.2016 and quash the same as illegal and consequently direct the respondents to settle all the terminal benefits including pension and all other attendant benefits by providing Personal Pay 5%, Basic Pay a Sum of Rs.975-1500 and counting half of service from contingencies service along with regular service for pension benefits.

2.The petitioner after completion of ITI, got the employment with the first respondent office and he joined the service as an Electrician (Motor Attender) on 03.07.1981. His service was regularized on 01.04.1987. Subsequently, the first respondent had given promotion on 25.07.1997 as Skilled Assistant Grade-II and he was a Group-C employee, the petitioner attained superannuation on 30.06.2015.

3.The petitioner submits that the basic salary was mentioned along with grade pay and dearness allowance as Rs.30,246/- in the service register. The second respondent issued proceedings in O.Mu.No.1710/A2/2015, dated 25.11.2015, wherein, the second respondent has sanctioned personal pay 5% and fixed Basic pay a sum of Rs.975 - 1500. However, all of a sudden, the second respondent denied 5% personal pay and denied basic pay a sum of Rs.975-1500 through impugned proceedings in Ni.Mu.No.714/A3/2016, dated 18.05.2016. Following the said order, the third respondent passed the recovery proceedings in No.Na.Ka.No.W1/mani.2/011039/2014, on 02.06.2016. The said order is impugned before this Court.

4. According to the petitioner, the impugned order was passed without any notice to the petitioner. As per G.O.Ms.237, dated 26.09.1996, which clearly indicates that the Basic pay for the Skilled Assistant Grade-II is eligible to get a sum of Rs.975-1500. Therefore, the petitioner is eligible to get 5% personal pay, as per G.O.Ms.664, dated 24.08.1992, issued by the Finance (Pay Cell) Department. To support the contention of the petitioner, he referred to the decision of the Hon'ble Supreme Court rendered in the case of State of Punjab and others Vs. Rafik Masih (White Washer) and others reported in 2015(4) SCC-334 and referred paragraph No.18, wherein it was held 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:



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(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."

5.By referring the judgment of the Hon'ble Supreme Court of India, the petitioner submitted that no recovery proceedings can be initiated even for any excess payment given to the petitioner by the respondents, after the retirement. Hence, the Recovery proceedings, initiated by the respondents are liable to be quashed.

6.On the other hand, the learned counsel for the respondents 1 and 3 strongly objected by way of filing counter affidavit and referred the paragraph Nos.4 & 5 stating that they are entitled to initiate recovery proceedings. The petitioner is not entitled for any pay in the pay band of 975-1500. With regard to the re-fixation of the pay, the respondents submitted that the petitioner has sent a representation and the same will be considered within a period, if any time limit that may be fixed by this Court.

7.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

8.Upon perusal of the document, it appears that initially by virtue of the proceedings in O.Mu.No.1710/A2/2015, dated

<https://hcservices.ecourts.gov.in/hcservices/>



25.11.2015, that the respondents granted 5% personal pay. But, however, the same was revised by virtue of the proceedings, dated 18.05.2016. The said order was issued after the retirement and recovery proceedings also initiated.

9. Upon perusal of the judgment of the White Washer case, it is clear that no recovery proceedings can be initiated after the retirement of the employee for any excess payment made by the employer.

10. In the present case, after the retirement only, the recovery proceeding was initiated that is not permissible, in view of the settled proposition of law laid down by the Hon'ble Apex Court. Accordingly, I propose to set aside the recovery proceedings initiated by the petitioner, dated 18.05.2016 and 02.06.2016 as the same is not sustainable, in view of the settled proposition of law laid down by the Hon'ble Apex Court and accordingly, the said impugned order is quashed and the writ petition is allowed.

11. With regard to re-fixation of the personal pay 5% and basic pay is concerned, the petitioner made a representation to the respondent on 04.07.2016, However, the said representation has not been disposed of even after the period four years and therefore, while quashing the order of the fourth respondent recovery proceedings, this Court directs the third respondent to dispose of the said representation within a period of four weeks from the date of receipt of a copy of this order on merits and in accordance with law.

12. With these directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.



To

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3.The Assistant Commissioner (Accounts)
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+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate (SR-19692[F] dated
12/10/2020)

+1 CC to M/s.R. KARUNANIDHI, Advocate (SR-19686[F] dated 12/10/2020
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AP (22/10/2020) 5P 6C