



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.19114 of 2015

and

M.P (MD)No.1 of 2015

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Kalawati

... Petitioner

Vs.

1.Union of India,
Represented by its Secretary to
Ministry of Civil Aviation,
New Delhi.

2.The Airports Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi - 110 003.

3.The Airport Director,
The Airport Authority of India,
Tirchy International Airport,
Trichy.

4.The Regional Executive Director,
Airports Authority of India,
Southern Region,
Chennai Airport,
Chennai - 600 007,
Tamil Nadu.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 3rd respondent in his proceedings No.AA1/TRY/MED/8460-61, dated 29.09.2015.

For Petitioner : Mr.V.Perumal

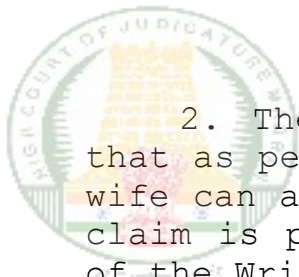
For Respondent-1 : Mr.R.Murugappan

For Respondents : Mr.C.Godwin
(R2 to R4)

O R D E R

The order of recovery dated 29.09.2015, is under challenge in the present Writ Petition.

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2. The reasons stated in the impugned order of recovery is that as per the Airport Authority of India Regulations, husband or wife can avail the Medical facility (OPD) and not both. Since the claim is preferred by Shri. K.Raju, Senior Attendant(HK), husband of the Writ Petitioner, the Writ Petitioner is not entitled.

3. The husband of the Writ Petitioner was retired from service. The petitioner is having hardly three more months of service. The allegation is that the medical facility is erroneously availed in violation of the Regulations.

4. The learned counsel for the petitioner submits that the impugned order of recovery has been passed without issuing any show-cause notice and opportunity and therefore, it is in violation of principles of natural justice. This apart, the petitioner is working as Class 4 employee and therefore, recovery would cause great hardship.

5. There was no misrepresentation. The petitioner was not aware of the Regulations in this regard and as per the Establishment Section advisory, it was sanctioned by the Establishment. Thus, the petitioner cannot be now penalized for the mistake committed by the Establishment of the respondent Authority.

6. The learned counsel for the respondent opposed the said contentions by stating that the petitioner had given a declaration stating that she will not claim any medical facility, as her husband was also an employee of the Airport Authority of India.

7. This Court is of the considered opinion that undoubtedly, as per the Regulations, if both the husband and wife are the employees of the Airport Authority of India any one can claim medical facility. In the present case, both the husband of the writ petitioner as well the Writ Petitioner were working as Class 4 employee. Therefore, while sanctioning the medical facility, the Authorities Competent in the Establishment Section ought to have verified the same, contrarily, the Establishment Section sanctioned and now in the eve of retirement, they are imposing recovery in respect of the medical facility extended erroneously and in violation of the Regulations.

8. This Court is of the considered opinion that the Hon'ble Supreme Court of India in the case of **State of Panjab Vs. Rafiq Maish** reported in **(2015 (4) SCC 334)** considered the issues and held in para 18 of the Judgment, 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 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."

9. As per the principles laid down by the Hon'ble Apex Court, recovery from the employees belonging to Class 3 and Class 4 services are impermissible. In the present case, the excess amount has been sanctioned by the Establishment despite the fact that there was a declaration by the petitioner. Thus, the amount excessively sanctioned by the Establishment is to be recovered from the Authority, who sanctioned the medical facility and certainly, not from the Group 4 employee viz., the Writ Petitioner. The loss occurred to the Airport Authority of India is to be recovered from the Authorities, who sanctioned the medical facility, without verifying the details available in the Service Records of the Writ Petitioner. However, as per the Judgment of the Supreme Court, the said excess amount paid cannot be recovered.



10. In this view of the matter, the impugned order of recovery passed by the 3rd respondent in proceedings Ref.No.AAI/TRY/MED/8460-61, dated 29.09.2015, is quashed and the Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

MPK

To

1.The Secretary to
Ministry of Civil Aviation ,
Union of India, New Delhi.

2.The Airports Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
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Trichy.

4.The Regional Executive Director,
Airports Authority of India,
Southern Region,
Chennai Airport,
Chennai - 600 007,
Tamil Nadu.

+1 CC to Mr.C.GODWIN, Advocate (SR-24534[F] dated 09/12/2020)

+1 CC to Mr.V.PERUMAL, Advocate (SR-24550[F] dated 09/12/2020)

W.P. (MD)No.19114 of 2015

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