



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.14549 of 2021

and W.M.P. (MD)No.11487 of 2021

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John Bosco

... Petitioner

versus

The Commissioner,
Thoothukudi Corporation,
Thoothukudi.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Na.Ka.No.000595/2021/~~FI~~/G.M.M dated 31.03.2021 of the respondent and quash the same and consequently, direct the respondent to disburse the petitioner's retirement benefits with interest.

For Petitioner : Mr.K.K.Ramakrishnan
For Respondent : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

This writ petition is filed as against the order of recovery dated 31.03.2021 passed by the respondent as against the petitioner.

2. The petitioner, on 01.08.1987, joined as a Watchman in the respondent Municipality, on daily wage basis. On 20.12.2000, the respondent, then Municipality, appointed him as Wireman helper on consolidated pay and on 23.02.2006, his service was regularized as Wireman Helper. The petitioner was about to retire from service on 30.06.2019. However, he discharged his duty as Wireman Helper till 30.03.2021. While so, the respondent passed the order of recovery dated 31.03.2021 that the petitioner, who comes under the category of Wireman, was permitted to work beyond the period of 58 years till 60 years and he has wrongly been paid salary and based on the audit report, recovery order has been passed. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submits that the petitioner was to retire from service on 30.06.2019. But, he discharged his duty as Wireman Helper after 30.06.2019 and more particularly, during the pandemic situation, he discharged his duty for public upto 30.03.2021, which is permissible under Rule 56(1) (A) of the Fundamental Rules. Therefore, the impugned order of recovery is per se illegal. He further submits that the impugned order of



recovery has been passed without giving an opportunity of hearing to the petitioner. Therefore, the impugned order is liable to be quashed.

4. Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondent submits that the petitioner was appointed as Watchman in the year 1987 and since he was governed under condition of service, he was classified as unskilled worker. After the respondent Municipality was upgraded as Corporation, the petitioner was brought under Subordinate Service Rules and got retirement from service on 30.03.2021. Since the petitioner comes under the category of Tamil Nadu State Subordinate Service Rules and as per Tamil Nadu State Subordinate Service Rules, he is entitled to work upto 58 years, but, he was wrongly allowed to work upto 60 years. Since the petitioner is an unskilled worker and based on the audit report, recovery order has been passed.

5. This Court paid its anxious consideration to the rival submissions.

6. Admittedly, the petitioner was appointed as unskilled worker and after the municipality was upgraded as Corporation, he has been brought under Tamil Nadu State and Subordinate Service Rules. The respondent Corporation permitted the petitioner to work beyond the period of 58 years and work was also extracted by the respondent from the petitioner, for which, salary has been paid to him.

7. The Hon'ble Apex Court, in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, reported in **(2015) 4 SCC 334**, has held as follows:

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (for Group C and Group D Service).

(ii) Recovery from the retired employees, or the 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



(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."

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8. In view of the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, since the petitioner comes under the category of Group C and Group D Service and he also retired from service, no such recovery order can be passed after retirement. Therefore, the impugned order dated 31.03.2021 passed by the respondent is liable to be set aside and accordingly, the same is set aside.

9. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Commissioner,
Thoothukudi Corporation,
Thoothukudi.

+1 CC to M/s.S.SAJI BINO, Advocate (SR-37811[F] dated 08/12/2021)

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-38058[F] dated 09/12/2021)

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MGJ(10.02.2022) 3P 4C