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W.P.No.11467 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11467 of 2011

V.D. Vetri Azhagan (Deceased)

2.V. Usharani

3.V. Sangeethapriya

4.V. Krishnakumar

5.V. Kavipriya

6.V. Dineshkumar

... Petitioners

*[*P2 to P6 substituted as LR's of deceased sole petitioner vide order dated 23.08.2022 made in WMP.No.8191 of 2020 in WP.No.11467 of 2011 by JSNPJ*]*

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,



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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 – 600 008.

5.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Government of Tamil Nadu,
Chennai – 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for 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 fix petitioner's pay in the appropriate and corresponding scale of pay as per Tamil Nadu Revised Scale of Pay Rules as requested by the petitioner in his representation dated 02.07.2009 vide Annexure-III duly permitting to draw arrears of pay and allowances from 01.04.1978 onwards.

For Petitioner : Mr.S. Sivakumar

For Respondents : M/s.P. Shanthi [R1]
M/s.S.Mekhala [R3]
Mr.G. Velu, [R4 & R5]
Additional Government Pleader
No appearance - R3



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ORDER

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Through the impugned order dated 18.12.2009, the first respondent herein had retrospectively revised the ordinary scale of pay/selection grade scale of pay and special grade scale of pay from the years 1974/1978/1984 and sought for recovery of the excess payment from the pensionary benefits of the deceased petitioner.

2. The order impugned is liable to be struck down on two principle grounds. Firstly, the impugned order itself indicates that no prior notice was issued nor the petitioner's objection was heard while retrospectively revising his pay scales. On this ground of violation of the principles of natural justice, the impugned order cannot be sustained. Secondly, the Hon'ble Supreme Court in the case '*State of Punjab Vs. Rafiq Masih (White Washer)*' reported in '*(2015) 4 SCC 334*', had held that recovery of excess payments made, owing to wrong fixation by the Government Department, particularly in the case of pensioners, is impermissible in law. Furthermore, the Hon'ble Supreme Court in the same decision has also held that recovery for excess payment made over and above five years is also impermissible. In the instant case, the



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ordinary scale of pay was made in the year 1974, the selection grade was in the year 1978 and the special grade was in the year 1984, which is over and above five years. In view of this settled principle of law, the impugned order cannot be sustained on this ground also.

3. The employee, who had retired as a Fitter Grade-I from Gandhi Nagar Town Panchayat, had expired pending the Writ Petition and is now substituted by his legal heirs.

4. In the light of the above findings, the impugned order dated 18.12.2009 passed by the first respondent, is hereby quashed. Consequently, there shall be a direction to the respondents 1, 2, 4 & 5 to forthwith pass orders disbursing all the Death cum Retirement Gratuity (DCRG) benefits due to late V.D. Vetri Azhagan/first petitioner, to his legal heirs namely the petitioners 2 to 6 herein, together with the pensionary benefits. The concerned respondents shall endeavour to pass such orders for disbursement of the monetary benefits, atleast within a period of six (6) weeks from the date of receipt of a copy of this order.



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5. With the above directions, this Writ Petition stands allowed.

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No costs.

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Speaking order/Non-speaking order
Index:Yes/No

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To

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- 4.The Director of Local Fund Audit,
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- 5.The Secretary to Government,
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M.S.RAMESH,J.

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