



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.16718 OF 2013

A.Renkapa (deceased)
R.Sumithra

..Petitioner

(Petitioner substituted as LR in the place of the deceased
Sole Petitioner Thiru A.Renkappa, vide Order dated 22.04.2022
made in W.M.P.No.9858 of 2022 in W.P.No.16718 of 2013)

Vs.

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

... Respondents

PRAYER:

This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 3rd respondent issued in Na.Ka.No.7316/2012/C3/ dated 09.02.2013 and quash the same.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader



ORDER

Based on the audit objections, the time scale of pay of the deceased workman was re-fixed for the period between 13.02.1984 and 31.03.2003 and through the impugned order, dated 09.02.2013, the third respondent herein had sought for recovery of a sum of Rs.57,323/- from the DCRG benefits. The late workman was working as an Overseer, which is a Class-III service.

2. While the learned counsel for the petitioner submits that such recovery without prior notice and after about 19 years, is impermissible, the learned Additional Government Pleader for the respondents placed reliance on the averments in the counter affidavit and submitted that owing to the audit objections, the third respondent herein, had issued the impugned order for recovery of the excess amount paid, owing to the wrong fixation of pay.

3. The Hon'ble Supreme 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 that recovery of excess payments, owing to the mistake of the employer, cannot be recovered from a pensioner and that too for a period in excess of 5 years. The relevant portion of the order reads 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 employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or 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 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."

4. Since the late workman had worked as Class-III employee at the relevant point of time and when the respondent had mistakenly claimed to have paid excess amount for a period which is in excess of 5 years and further that the workman has retired from service on 24.02.2011, the contemplated recovery from a retired employee, is impermissible in law, in view of the findings of the Hon'ble Supreme Court in the aforesaid decision. Even otherwise, when the third respondent had sought for recovering the excess amount, without any prior notice, the impugned order itself is in violation of principles of natural justice and on that ground also, cannot be sustained.

5. For all the foregoing reasons, the impugned order dated 09.02.2013, on the file of the 3rd respondent is quashed. Accordingly, the writ petition stands allowed. No costs.

6. Since the very action of the third respondent is now held to be illegal, the petitioner/legal heir of deceased workman, would be entitled for interest at the rate of 6 % per annum on the amounts already recovered pursuant to the impugned order, from the date of recovery till the date of actual payment.

7. In view of the quashing of the impugned order, there shall be a direction to the third respondent to forthwith refund the amount recovered pursuant to the impugned order, dated 09.02.2013, together with interest at the rate of 6% per annum, from the date of recovery, till the date of actual refund, within a period of four weeks, from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Pns

Sub Assistant Registrar



To

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.28053
+1cc to the Government Pleader, S.R.No.28635

W.P.No.16718 of 2013

GPL (CO)
PM/25/05/2022