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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.8295 of 2010

and

M.P. No.1 of 2011

1. D.Rajendra Babu (deceased)  
2. Sivagama Sundari  
(P2 substituted as LR of deceased sole petitioner vide order dated 22.11.2021 made in W.M.P.28796 of 2019 in W.P.No.8295 of 2010 by MSQJ) ...Petitioners

Vs.

1.The Director of Local Fund Audit,  
Kuralagam, Chennai-600 108.  
2.The Commissioner of Municipality,  
Nellikuppam Municipality,  
Cuddalore District.  
3.The Commissioner,  
Cuddalore Municipality,  
Cuddalore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in Na.Ka.No.3083/2006/C1 dated 14.08.2008 and quash the same thereby directing the respondents to pay DCRG amount of Rs.68,823 with 12% compoundably from 01.02.2007 till the date of payment and the respondents are liable to pay interest on the belated payment of gratuity and commuted value pension and all other pensionary benefits.

For Petitioner : M/s.A.R.Nixon

For Respondent 1 : Mr.U.M.Ravichandran  
Spl. Govt. Pleader

For Respondent 2 : No appearance



For Respondent 3

: Mr.R.Murali

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ORDER

The writ petition is filed praying for a writ of certiorarified mandamus directing to quash the communication dated 14.08.2008 and further direct the respondents to pay the amount withheld in DCRG amount of Rs.68,823/- along with interest which has been retained by the respondents herein.

2. It is the case of the petitioner that the respondents have sought to recover a sum of Rs.68,823/- due to certain audit objections and the same was communicated to the deceased petitioner/D.Rajendra Babu vide a letter dated 14.08.2010 subsequent to the retirement of the deceased petitioner on 31.01.2007. Admittedly, there has been no charge memo issued to indicate as to how the above sums were due from the deceased petitioner. It is also submitted that the petitioner has passed away on 13.03.2018 and his wife was impleaded as a legal heir vide an order of this Court in W.M.P. No.28796 of 2019 dated 22.11.2021. As there is no charge framed against the deceased petitioner, there cannot be a recovery, hence, the recovery is bad in law and the same ought to be refunded to the petitioner along with interest.

3. In response to the above submission, Mr.Murali, learned counsel for the respondents referred to the communication dated 31.01.2007 wherein an undertaking was sought to be obtained by the respondent, however, there is nothing on record which would indicate that the deceased petitioner has complied with the same.

4. In any view, in the absence of any charge having been made against the deceased petitioner, the recovery which is made in gross violation of the procedures contemplated in terms of serving a charge memo, having not been complied with the entire proceedings ought to fail. Since, the petitioner has passed away, there can be no charge memo filed against him. It is thus, submitted that the recovery without a charge memo and in gross violation of the procedures cannot be sustained and is liable to be set aside.

5. It is submitted by the learned counsel appearing for the respondents on instructions that there has been no undertaking given to the respondent. In view of the same, there



is no serious objection from the learned counsel for the respondents. Therefore, this Court is inclined to set aside the recovery proceedings with a direction to the respondents to refund the recovered sum to the petitioner along with interest, in accordance with law.

6. With the above direction, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

mka

To:

1.The Director of Local Fund Audit,  
Kuralagam, Chennai-600 108.

2.The Commissioner of Municipality,  
Nellikuppam Municipality,  
Cuddalore District.

3.The Commissioner,  
Cuddalore Municipality,  
Cuddalore.

+1 CC to Mr.A.R. Nixon, Advocate sr 12655

+1 CC to Mr.R.Murali, Advocate sr 12898.

W.P. No.8295 of 2010  
and  
M.P. No.1 of 2011

MT (CO)  
SP(23/03/2022)