



W.P.No.24562 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.24562 of 2018
and W.M.P.No. 28597 of 2018

1.D.Sekar

2.K.Dhandapani

3.M.Gajendran

4.T.Kanniappan

5.M.Shankar

.... Petitioners

-Vs-

1.The Commissioner

Municipal Administration.

Chepauk, Chennai 600 005.

2.The Commissioner

Nellikuppam Municipality

Cuddalore District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in connection with the impugned order of recovery passed by the 2nd respondent in Na.Ka.No.3278/2011/H1 dated 20.08.2018 and to quash the same.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader – for R1
Mr.V.Jayaprakash Narayanan
Standing Counsel – for R2



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ORDER

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The prayer sought for herein is for a Writ of Certiorari to call for the records in connection with the impugned order of recovery passed by the 2nd respondent in Na.Ka.No.3278/2011/H1 dated 20.08.2018 and to quash the same.

2. The petitioners were appointed as daily wage sanitary workers in the year 1991 through Employment Exchange based on their seniority. Subsequently, they were brought under the consolidated pay in the year 1999 and 2000 respectively by proceedings dated 21.11.2000.

3. Thereafter, the services of the petitioners were regularized from 27.02.2006 by the second respondent by order dated 27.02.2006. As such the petitioners are working as sanitary workers in the second respondent Municipality.

4. Though the services of the petitioners had been regularized, of course pursuant to the order passed by this Court in W.P.No.12738 of 2012 dated 06.06.2012, even though the Municipality unsuccessfully filed a Review Application in R.A.No.126 of 2012 as against the order dated 06.06.2012, as the said Review was dismissed by order dated 27.09.2012, now the present order dated 28.02.2018 had been passed to recover the salary paid to the petitioners



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by way of time scale of pay under which the petitioners had been brought in on completion of three years of their service from their date of initial appointment on the basis of the alleged audit objection. That is how the present writ petition has come up before this Court.

5. Heard Mr.S.Sivakumar, learned counsel for the petitioner, Mr.U.M.Ravichandran, learned Special Government Pleader for the first respondent Government and Mr.V.Jayaprakash Narayanan, learned Standing Counsel for the second respondent Municipality.

6. Learned Standing Counsel for the Municipality as well as the learned Special Government Pleader for the first respondent had submitted that, though the Writ Court passed an order, pursuant to which the benefit of regularizing their services by bringing them under time scale of pay has been undertaken in respect of these petitioners on completion of three years from their date of engagement, instead of the date of Government Order in G.O.No.21, Municipal Administration and Water Supply Department dated 23.02.2006, the issue had been subsequently decided by the Full Bench of this Court in the matter of **"S.Dhanasekaran -Vs- Government of Tamil Nadu"** in W.P.(MD) No.1083 of 2012, wherein it was held that, in respect of regularization in service, such regularization shall take effect only from 23.02.2006 and not from the date on



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which they had completed three years of service from the date of their initial entry into service.

7. Though subsequently review was filed before the Full Bench in R.A.(MD) No.87 of 2014, the said review was allowed by the Full Bench to the effect that, the persons employed as sanitary workers and covered by G.O.Ms.No.101 dated 30.04.1997 and G.O.Ms.No.71 dated 05.05.1998 are entitled to be regularized after the completion of the respective period under consolidated pay as specified in the Government Orders from the date of their initial appointment, and also held that any orders passed by any Municipality regularizing the service based on G.O.Ms.No.21 dated 23.02.2006, the Full Bench judgment dated 29.11.2013 and G.O.Ms.No.166 dated 31.12.2014 shall be recalled and appropriate orders shall be passed as held above.

8. Therefore, the import of the initial order passed by the Full Bench in **"S.Dhanasekaran -Vs- Government of Tamil Nadu"** in W.P.(MD) No.1083 of 2012 referred to above, since has been modified by the order in the Review Application (MD) No.87 of 2014 as stated above, as against the said order passed in the Review, Special Leave Petition (SLP) had been filed by the Government in SLP(C) No.21249 of 2017 etc., and the Hon'ble Supreme Court has stayed the order passed in the Review Application (MD) No.87 of 2014 and the said SLP



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since is pending till date before the Hon'ble Supreme Court, the import of the modified order by way of Review made by the Full Bench cannot be taken advantage by the petitioners. Therefore, the audit objections raised in this regard to recover the excess amount paid to these petitioners can be made possible and that is the reason why the impugned order has been passed, learned counsel for the respondents contended.

9. I have heard the learned counsel appearing for both sides and have perused the materials placed on record.

10. First of all, the benefit of regularizing the services of the petitioners on completion of three years of their initial engagement or appointment has come only pursuant to the judicial order passed by this Court by order dated 06.06.2012 in W.P.(MD) No.12738 of 2012, where a learned Judge of this Court has passed the following order.

“9. Hence the impugned order dated 27.02.2006 insofar as restricting the regularization granted to the petitioners from 27.02.2006 is set aside and the writ petition is allowed with a direction to the respondents to regularize the services of the petitioners as Sanitary Workers in the third respondent Municipality, from the date of completion of three years of continuous service in terms of G.O.Ms.No.199, Municipal



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Administration and Water Supply (MC3) Department, ated 12.08.1997 with all monetary benefits. The respondents can very well verify the dates of completion of services of the petitioners and grant relief. Necessary order is directed to be passed by the respondents within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. However, no order as to costs.”

11. As against the said order, when a Review was filed by the Municipality, that was also dismissed by order of the learned Judge dated 27.09.2012 in Review Application 126 of 2012 in W.P.No.12738 of 2012 by passing the following order.

“ 2. The very issue was already considered by this Court in W.P.No.4229 of 2010 by KNBJ by order dated 08.09.2011 and in the said writ petition, it is held that G.O.Ms.No.71 MA and WS Department dated 05.05.1998 and and G.O.Ms.No.199 dated 12.08.1997 are similar and this Court is not able to find any substantial difference between the two Government Orders.

3. Learned counsel appearing for the respondents also submitted that same view was taken by the Division Bench of this Court in W.a.No.1631 of 2011 dated 10.04.2012 and W.A.Nos.1306 and 2389 of 2011 dated 12.09.2012.

4. Hence, no ground is made out to review the order in W.P.No.12738 of 2012 dated 06.06.2012. The review petition is



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therefore dismissed. No costs."

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12. Only pursuant to these orders, the benefit of regularizing the services of the petitioners on completion of three years from their initial appointment had been undertaken and accordingly they have been brought under time scale of pay and such benefits had been extended to them. Therefore, the said benefit extended to the petitioners pursuant to the judicial decision cannot be taken away.

13. Assuming that subsequently the law has been declared by the Full Bench of this Court in "**S.Dhanasekaran -Vs- Government of Tamil Nadu**" cited supra, subsequently when Review was filed, the order was reversed or modified, whereby the benefit can be extended as has already been extended to those petitioners.

14. Though the respondents filed Special Leave Petition against the order passed by the Full Bench in the Review referred to above, where interim order of stay has been granted, the ultimate finding as to whether the petitioners are similarly placed persons and can be extended the benefit of regularization with time scale of pay with effect from the completion of three years service from their initial date of entry or with effect from the date of Government Order



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concerned, is altogether a question to be ultimately decided by the Hon'ble Supreme Court in the pending SLP.

15. Therefore, at this juncture, in the interregnum what has been paid to the petitioners whether can be recovered or not, is the only question to be decided by this Court.

16. In this context, even otherwise where any alleged excess payment was made, for which the reasons cannot be attributable on the workers, or if it has been mistakenly paid pursuant to the Court order and based on the audit objection whether it can be recovered is concerned, the issue is no more *res integra* as the authoritative pronouncement is already available in **2014 (8) S.C.C.833 "State of Punjab v. Rafiq Masih (White Washer)"**.

17. In the said case, four situations has been visualized by the Hon'ble Supreme Court, under which such recovery is not possible. This has again been reiterated and amplified by the very recent decision in **"Thomas Daniel -Vs- State of Kerala"** reported in **2022 SCC Online SC 536**, where the White Washer case cited supra has been



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taken into account and accordingly the following order has been passed
by the Hon'ble Supreme Court.

“(13) In State of Punjab and Others v. Rafiq Masih (White Washer) and Others wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

“8. As between two parties, if a determination is rendered infavour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the



amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

xxx xxx xxx

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 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."*



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(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

(16) In the result, the appeal succeeds and is accordingly allowed. The Judgment and order of the Division Bench dated 02.03.2009 and also of the learned Single Judge of the High Court dated 05.01.2006 impugned herein, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are hereby set aside. There shall be no order as to costs."

18. In view of the aforesaid settled legal position, where such recovery even otherwise on merits would not be possible to be undertaken from the petitioners, who are admittedly Group 'C' and Group 'D' workers ie., sanitary workers, as is now made through the impugned order for recovery of the alleged excess salary paid to them.



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19. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order dated 20.08.2018 is set aside and if any recovery had already been made pursuant to the impugned order, that shall be repaid to the petitioners and no such recovery shall be made from the amount paid already to the petitioners.
- Insofar as the status of the petitioners as to whether they would be entitled to get regularization with time scale of pay on completion of three years service from the date of their initial engagement or otherwise, that would be decided ultimately of course depending upon the decision to be made by the Supreme Court in the pending SLP cited supra.
- It is brought to the notice of this Court that the 2nd petitioner in this writ petition viz., one K.Dhandapani has already attained superannuation. His case is covered under one of the situations visualized by the Hon'ble Supreme Court in Para 18 of the **White Washer** case cited supra. Therefore, there could be no chance of



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recovery from that petitioner and hence the same is recorded herein. In view of the same, the post retiral benefits to be settled to the said petitioner shall be paid to him by the respondent Municipality within a period of eight weeks from the date of receipt of a copy of this order.”

20. With the above directions, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

25.07.2022

Index : Yes
Internet : Yes
KST

To

- 1.The Commissioner
Municipal Administration.
Chepauk, Chennai 600 005.
- 2.The Commissioner
Nellikuppam Municipality
Cuddalore District.



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R. SURESH KUMAR, J.

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